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A SOURCE BOOK OF AMERICAN POLITICAL THEORY

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A SOURCE BOOK OF AMERICAN POLITICAL THEORY

Edited with Introductory Notes

By

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New York

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1929

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PREFACE

This compilation has been prepared as the result of a conviction that the study of political theories can be satisfactory only when the original writings are available to the student. Secondary accounts of such writings are, of course, useful as guides and as commentaries, but they do not take the place of the documents themselves. Most of the classics of European political theory, from Plato to John Stuart Mill, are now to be had in convenient and inexpensive editions, but the writings of American political thinkers are, for the most part, not to be found in similar form. Many of them have never been reprinted, very few indeed in cheap editions. A large proportion of them can be consulted only in the most extensive libraries, and, even there, they are ordinarily unavialable for the student or the casual reader as a result of their rarity or of the bulky character of the collections in which they are found. I have attempted to remedy this situation somewhat by including in a single volume selections from the most important and less available American political literature. Rather than reprint a very large number of extracts which would be too short to give any real indication of the nature of the works from which they were taken I have chosen to include a smaller number of more substantial length.

I have not attempted to include in this book all of the materials which are of significance in the study of American political theory. The literature of a number of movements and the writings of many individual authors have necessarily been omitted. Some of these, for example the *Federalist* and judicial opinions on important questions of public law, because they are readily available in other forms, some because they are believed to be of relatively less significance than those selected, others because they can not satisfactorily be cut to a length which would make their inclusion possible. However, the most significant turning points in the history of American theory are dealt with and all of the outstanding theorists are represented by one or more selections. For the period since the Civil War the problem of selection is particularly difficult. Of the merit and influence of the earlier writings we are now in a

position to judge with some degree of satisfaction; but it is as yet impossible to evaluate the recent productions. It would seem that there is among them no work of high distinction or of great influence—no *Federalist*, or *Common Sense*, or *Disquisition on Government*. Perhaps, however, the future will judge them differently, and, although they are not of established merit or particularly inaccessible it has been thought desirable to attempt a selection which would indicate certain currents of thought and furnish material for class use.

I am grateful to my colleagues Professors Munro and McIlwain, for valuable suggestions concerning the choice of materials. Professor McIlwain also read the first four chapter introductions and saved me from a number of errors.

I am also grateful to Mrs. Woodrow Wilson, Mr. Justice Holmes, Professor Irving Babbitt, the Princeton University Press, the Harvard University Press, Harcourt, Brace and Company, the Robert M. La Follette Company, the Outlook Company, and the Atlantic Monthly for permission to reprint copyrighted materials.

B. F. Wright, Jr.

Cambridge, Mass.
July 11, 1929.

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A SOURCE BOOK
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CHAPTER I

THE THEOCRATIC IDEAL IN EARLY NEW ENGLAND

INTRODUCTION

Philosophic discussion of political problems is not characteristic of colonies. The writings of the early period in New England, crabbed and illiberal as most of those writings are, appear more remarkable when compared with the almost complete absence of any political literature in the colonies to the south. There were frequent struggles in those colonies for place and power, but the controversies did not result, as in New England, in the production of a considerable volume of material discussing the nature and source of political power and the organization and functions of government. The reason for the difference is probably to be found in the strongly religious character of the Puritan culture. Most of the controversies in early New England were of purely local and temporary importance, and the authors of the pamphlets, speeches, and books which resulted from these controversies were not men who would under ordinary circumstances be concerned with political ideas. However, the close relationship of politics with religion, with which they were profoundly concerned, resulted in the discussion of principles which apply far beyond the bounds of the small Puritan colonies. To Cotton, Winthrop, Daven-

port, Hooker, and other leaders of these settlements, politics was the hand maiden of religion; like the theorists of the middle ages they believed the two to be inseparable. Most of the political doctrine which this group developed and expounded has gone the way of most of their theology, but it has nevertheless left its imprint upon the political and legal ideas of a later age just as the harsh Puritan theology has influenced the religious beliefs and practices of a far less religious age.

Until fairly recently the tradition was generally accepted that the Puritans came to the land of promise in order to establish a refuge for the oppressed and a model of popular government. A more critical reading of the early records and the religious and political literature has shown that, with rare exceptions, their intention was to found a colony for people of their own religion, and that the original plans of government had in them little of democracy. The first rulers of Massachusetts Bay desired to establish and perpetuate government by a close corporation, and it was only after a number of struggles between the freemen and the ruling class, represented by the governor and assistants, that the early oligarchy was transformed into a more popular government. In certain of the other settlements a somewhat more democratic form existed from the beginning, but in Rhode Island alone was there separation of church and state and toleration for different religions. It is to be remembered that the first generation of New Englanders left England before the principles of limited, representative government and of religious toleration were developed. Centuries of constitutional development had prepared the way for the splendid series of political writings which are among the greatest of England's contributions to modern civilization, but neither the writings nor the institutions of England under Charles Stuart were such as to furnish examples for the founding of a democratic commonwealth.

A few among the leaders of these colonies were acquainted with the principles of the English common law. But there

was little desire on the part of any of the colonists to follow that law with any strictness. Rather did they rely upon the Hebrew law of the Old Testament. The principle stated in the Fundamental Articles of New Haven—that the Scriptures hold a perfect rule for the government of men "as well in the government of famylyes and commonwealths as in matters of the church," was generally accepted. The view of most of them is that which preceded the acceptance of the modern theory of sovereignty; to them law is not made, it is found. For the legislator they have little need; all that is required is for the magistrate or the judge to discover, interpret, and apply the rules laid down by God for the goverance of His people.

It is no mere coincidence that of the six writers represented in this chapter, five were ministers. In early New England the religious leaders were usually civil leaders also. The high standard of education among the ministry (in this group four had been at Cambridge, one at Oxford, and one, a member of the second generation, at Harvard) coupled with the close relationship of civil and ecclesiastical affairs resulted in their being the literary controversialists in the politics of both church and state.

JOHN COTTON

LETTER TO LORD SAY AND SELE [1]

1636

After a short period as Fellow of Emmanuel College, Cambridge, Cotton was for many years vicar of a church in Boston, Lincolnshire. His adherence to Puritan doctrines and forms led to his being summoned to appear before the High Commission Court. He managed to escape in disguise and, in 1633 at the age of forty-eight, emigrated to Massachusetts Bay. For the remaining

[1] Thomas Hutchinson, *History of the Colony of Massachusetts-Bay*. Boston, New-England: T. & J. Fleet, 1764. Vol. I, pp. 496–501.

nineteen years of his life he was first among the ministers who guided the ecclesiastical and civil affairs of that colony. This letter to one of the leading Puritan peers is the best short statement of his political faith. More elaborate expositions are found in his books, particularly in his tract written against Roger Williams' argument for toleration, *The Bloudy Tenant, washed and made White in the Bloud of the Lambe* (1647).

. . . . Your Lordships advertisement touching the civill state of this colony, as they doe breath forth your singular wisdome, and faithfulness, and tender care of the peace, so wee have noe reason to misinterprite, or undervalue your Lordships eyther directions, or intentions therein. I know noe man under heaven (I speake in Gods feare without flattery) whose cousell I should rather depend upon, for the wise administration of a civill state according to God, than upon your Lordship, and such confidence have I (not in you) but in the Lords presence in Christ with you, that I should never feare to betrust a greater commonwealth than this (as much as in us lyeth) under such a *perpetuâ dictaturâ* as your Lordship should prescribe. For I nothing doubt, but that eyther your Lordship would prescribe all things according to the rule, or be willing to examine againe, and againe, all things according to it. I am very apt to believe, what Mr. Perkins hath, in one of his prefatory pages to his golden chaine, that the word, and scriptures of God doe conteyne a short *upoluposis*, or platforme, not onely of theology, but also of other sacred sciences, (as he calleth them) attendants, and handmaids thereunto, which he maketh ethicks, eoconomicks, politicks, church-government, prophecy, academy. It is very suitable to Gods all-sufficient wisdome, and to the fulnes and perfection of Holy Scriptures, not only to prescribe perfect rules for the right ordering of a private mans soule to everlasting blessednes with himselfe, but also for the right ordering of a mans family, yea, or the commonwealth too, so farre as both of them are subordinate to spiritual ends, and yet avoide both the churches usurpation upon civill jurisdictions, *in ordine ad spiritualia*, and the commonwealths invasion upon ecclesiasticall administrations, *in ordine* to civill peace, and conformity to the civill state. Gods institutions (such as the government of church and of commonwealth be) may be close and compact, and co-ordinate one to another, and yet not confounded. God hath so framed the state of church government and ordinances, that they may be compatible to any common-

wealth, though never so much disordered in his frame. But yet when a commonwealth hath liberty to mould his owne frame (*scripturæ plenitudinem adoro*) I conceyve the scripture hath given full direction for the right ordering of the same, and that, in such sort as may best mainteyne the *euexia* of the church. Mr. Hooker doth often quote a saying out of Mr. Cartwright (though I have not read it in him) that noe man fashioneth his house to his hangings, but his hangings to his house. It is better that the commonwealth be fashioned to the setting forth of Gods house, which is his church: than to accommodate the church frame to the civill state. Democracy, I do not conceyve that ever God did ordeyne as a fitt government eyther for church or commonwealth. If the people be governors, who shall be governed? As for monarchy, and aristocracy, they are both of them clearly approoved, and directed in scripture, yet so as referreth the soveraigntie to himselfe, and setteth up Theocracy in both, as the best forme of government in the commonwealth, as well as in the church.

The law, which your Lordship instanceth in [that none shall be chosen to magistracy among us but a church member] was made and enacted before I came into the country; but I have hitherto wanted sufficient light to plead against it. The rule that directeth the choice of supreame governors, is of like aequitie and weight in all magistrates, that one of their brethren (not a stranger) should be set over them, Deut. 17. 15. and Jethroes counsell to Moses was approved of God, that the judges, and officers to be set over the people, should be men fearing God, Exod. 18.21. and Solomon maketh it the joy of a commonwealth, when the righteous are in authority, and their mourning when the wicked rule, Prov. 29.21. Jab. 34.30. Your Lordship's feare, that this will bring in papal excommunication, is iust, and pious: but let your Lordship be pleased againe to consider whether the consequence be necessary. *Turpius ejicitur quam non admittitur:* nonmembership may be a just cause of non-admission to the place of magistracy, but yet, ejection out of his membership will not be a just cause of ejecting him out of his magistracy. A godly woman, being to make choice of an husband, may justly refuse a man that is eyther cast out of church fellowship, or is not yet receyved into it, but yet, when shee is once given to him, she may not reject him then, for such defect. Mr. Humfrey was chosen for an assistant (as I heare) before the colony came over

hither: and, though he be not as yet joyned into church fellowship (by reason of the unsetlednes of the congregation where he liveth) yet the commonwealth doe still continue his magistracy to him, as knowing he waiteth for oppertunity of enjoying church fellowship shortly.

When your Lordship doubteth, that this corse will draw all things under the determination of the church, *in ordine ad spiritualia* (seeing the church is to determine who shall be members, and none but a member may have to doe in the government of a commonwealth) be pleased (I pray you) to conceyve, that magistrates are neyther chosen to office in the church, nor doe governe by directions from the church, but by civill lawes, and those enacted in generall corts, and executed in corts of justice, by the governors and assistants. In all which, the church (as the church) hath nothing to doe: onely, it prepareth fitt instruments both to rule, and to choose rulers, which is no ambition in the church, nor dishonor to the commonwealth, the apostle, on the contrary, thought it a great dishonor and reproach to the church of Christ, if it were not able to yield able judges to heare and determine all causes amonst their brethren, I Cor. 6.I. to 5. which place alone seemeth to me fully to decide this question: for it plainely holdeth forth this argument: It is a shame to the church to want able judges of civill matters (as v.5) and an audacious act in any church member voluntarily to go for judgment, otherwhere than before the saints (as v.I.) then it will be noe arrogance nor folly in church members, nor prejudice to the commonwealth, if voluntarily they never choose any civill judges, but from amongst the saints, such as church members are called to be. But the former is cleare: and how then can the latter be avoyded. If this therefore be (as your Lordship rightly conceyveth one of the maine objections if not the onely one) which hindereth this commonwealth from the entertainment of the propositions of those worthy gentlemen, wee intreate them, in the name of the Lord Jesus, to consider, in meeknes of wisdome, it is not any conceite or will of ours, but the holy counsell and will of the Lord Jesus (whom they seeke to serve as well as wee) that overruleth us in this case: and we trust will overrule them also, that the Lord onely may be exalted amongst all his servants. What pittie and griefe were it, that the observance of the will of Christ should hinder good things from us!

But your Lordship doubteth, that if such rule were necessary, then the church estate and the best ordered commonwealth in the world were not compatible. But let not your Lordship so conceyve. For, the church submitteth itselfe to all the lawes and ordinances of men, in what commonwealth soever they come to dwell. But it is one thing, to submit unto what they have noe calling to reforme: another thing, voluntarily to ordeyne a forme of government, which to the best discerning of many of us (for I speak not of myselfe) is expressly contrary to rule. Nor neede your Lordship feare (which yet I speake with submission to your Lordships better judgment) that this corse will lay such a foundation, as nothing but a mere democracy can be built upon it. Bodine confesseth, that though it be *status popularis*, where a people choose their owne governors; yet the government is not a democracy, if it be administred, not by the people, but by the governors, whether one (for then it is a monarchy, though elective) or by many, for then (as you know) it is aristocracy. In which respect it is, that church government is justly denyed (even by Mr. Robinson) to be democratical, though the people choose their owne officers and rulers.

Nor neede wee feare, that this course will, in time, cast the commonwealth into distractions, and popular confusions. For (under correction) these three things doe not undermine, but doe mutually and strongly mainteyne one another (even those three which we principally aime at) authority in magistrates, liberty in people, purity in the church. Purity, preserved in the church, will preserve well ordered liberty in the people, and both of them establish well-ballanced authority in the magistrates. God is the author of all these three, and neyther is himselfe the God of confusion, nor are his wayes the wayes of confusion, but of peace.

What our brethren (magistrates or ministers, or leading freeholders) will answer to the rest of the propositions, I shall better understand before the gentlemans returne from Connecticutt, who brought them over. Mean while two of the principall of them, the generall cort hath already condescended unto. I. In establishing a standing councell, who, during their lives, should assist the governor in managing the chiefest affayres of this little state. They have chosen, for the present, onely two (Mr. Winthrope and Mr. Dudley) not willing to choose more, till they see

what further better choyse the Lord will send over to them, that so they may keep an open doore, for such desireable gentlemen as your Lordship mentioneth. 2. They have graunted the governor and assistants a negative voyce, and reserved to the freemen the like liberty also. . . .

JOHN WINTHROP

When Winthrop came to New England in 1630, in the forty-third year of his age, he came not as an unknown immigrant, but as the Governor of the colony and the custodian of its charter. A member of the ruling class in England, he was not predisposed toward popular government, and his reading of Calvin and of the Scriptures confirmed his own habits and prejudices. These writings were prepared for the purpose of explaining and defending the principles of the government of the colony of which he was twelve times elected governor. The controversies which led to their writing are described in his Journal.

A REPLYE TO THE ANSWER MADE TO THE DISCOURSE ABOUT THE NEGATIVE VOTE [1]

1643

2: That which makes a specificall difference between one forme of Government & another is essentiall & fundamental But the Negative vote in the magistrates dothe so in our Government therefore it is essentiall and fundamentall.

The Assumption is proved by this, that if the Negative vote were taken awaye our Government would be a meere Democratie whereas now it is mixt. This I prove thus:

Where the Chief Ordinary power and administration thereof is in the people there is a Democracie: This I prove thus, If it be in the Deputyes it is in the people, but it wilbe in the Deputyes: go. [?] &c, for they are but the representative bodye of the people, & the matter lyes not in the number of the people Assembled, but in their power: Againe the people are not bounde to sende their Deputyes, but they may come themselves, if they will And

[1] Robert C. Winthrop, *Life and Letters of John Winthrop*. . . . Boston: Ticknor and Fields, 1867. Vol. II, pp. 429–30. [In this and the following selection a number of words abbreviated in the original are spelled out.]

thoughe the magistrates be joyned with them in the Court, as they were in Athens & other popular states in Greece &c: yet they serve but as Councellors, seinge they shall haue but their single votes, as every one of the people hathe. Lastly the Answerer himselfe confessethe, that the Deputyes are the Democraticall part of our Government.

Now if we should change from a mixt Aristocratie to a meere Democratie: first we should have no warrant in scripture for it: there was no such Government in Israell.

2: We should heerby voluntaryly abase ourselves, & deprive ourselues of that dignitye, which the providence of God hath putt vpon vs: which is a manifest breach of the 5th Commandment for a Democratie is, among most Civill nations, accounted the meanest & worst of all formes of Government & therefore in writers, it is branded with Reproachfull Epithits as *Bellua mutorū capitū*, a monster, &c: & Historyes doe recorde, that it hath been allwayes of least continuance & fullest of troubles. . . .

ARBITRARY GOVERNMENT DESCRIBED AND THE GOVERNMENT OF THE MASSACHUSETTS VINDICATED FROM THAT ASPERSION [1]

1644

[440] Arbitrary Government is, where a people have men sett ouer them, without their choyce, or allowance: who haue power to governe them, & Judge their Causes without a Rule.

God onely hathe this prerogatiue: whose Sovereintye is absolute, & whose will is a perfecte Rule, & Reason it selfe; so as for man to usurpe suche Authority, is tiranye, & impietye.

Where the people have Liberty to admitt, or reject their Governours; & to require the Rule by which they shalbe governed & Judged, this is not an Arbitrarye Gouernment.

That the Government of the Massachusetts is such, will appeare, 1: by the foundation of it: 2: by the positive Lawes thereof: 3: by the constant practice, which proues a custome, then which (when it is for common good) there is no Lawe of man more inviolable.

[1] *Life and Letters of John Winthrop*, vol. II.

1: The Foundation of this Government is the Kinges Letters Patents: this gaue them their Forme & beinge in disposinge a certaine number of persons into a bodye politike; whereby they became then (in suche a politike respecte) as one single person, consisting of severall members: & appointinge to eache its proper place: it regulates their power & motions as might best conduce to the preservation & good of the wholl bodye:

The parties or members of this bodye politike are reduced under 2: kinds, Gouernor & Companye, or Freemen: to the Governor it adds a Deputye & 18: assistants: in these is the power of Authority placed, vnder the name of the Governor (not as a person, but as a State) & in the other (which is named the Company) is placed the power of Liberty;—which is not a bare passive capacitye of freedome, or immunitye, but suche a Libertye, as hathe power to Acte vpon the chiefest meanes of its owne welfare (yet in a way of Libertye, not of Authoritye) & that under 2: generall heads, election, & counsell: 1: they have libertye to electe yearly (or oftener if occasion require) all their Governors, & other their generall officers, viz: suche as should haue influence (either Juditiall or ministeriall) into all partes of the Jurisdiction. 2: They haue libertye of Counsell in all the generall Assemblyes, so as without their counsell & consent, no Lawes, decrees, or orders, of any publike nature or concernment, nor any Taxes, impositions, impresses, or other burdens of what kinde soeuer, can be imposed upon them, their familyes or estates, by any Authoritye in the Government: which notwithstanding remaines still a distinct member, euen in those generall Assemblyes: other wise our state should be a meer Democratie, if all were Gouernors, or magistrates, & none lefte to be an obiecte of Government which cant fall out in any kinde of Aristocratie.

To make this cleare, we will sett downe the verye words of the Patent. . . .

[443] Thus it appeares that this Government is not Arbitrary in the foundation of it, but Regulated in all the partes of it.

2: It wilbe yet further found by the positive Lawes thereof:

And first by that of (3) 14–1634: where it is declared, that The generall Court only may make ffreemen: make Lawes: choose Generall officers, as Governor, Deputie, Assistants, treasurer, &c: remove suche: sett out their power & dutye: rayse monyes: dispose of lands in proprietyes: not to be dissolved but by consent

of the major parte. The ffreemen of the severall Townes may send their deputyes to euerye generall Court who may doe all that the bodye of ffreemen might doe, except in Election of magistrates & officers.

And in the 67: Libertye, it is thus described viz—It is the constant Libertye of the freemen, to choose yearly, at the Court of Election, out of the freemen, all the generall Officers of this Iurisdiction. If they please to discharge them at the Court of Elections, by vote, they may doe it without shewing Cause: but if at any other generall Court, we hould it due Iustice, that the Reasons thereof be alledged & proved. By Generall officers, we meane our Governor, Deputye Governor, Assistants, Treasurer, Generall of our Warres, & our Admirall at Sea; & suche as are, or may be hereafter, of like generall nature.

3: Accordinge to these fundamentall Rules, & positiue Lawes, the Course of Government hathe been carried on in the practice of publicke Administrations to this verye daye, & where any considerable obliquitye hathe been discerned, it hathe been soone brought to the Rule & redressed: for it is not possible in the infancye of a plantation, subjecte to so many & variable occurents, to holde so exactly to Rules, as when a state is once settled.

By what hathe been allreadye manifested, this Government is freed from any semblance of Arbitrarinesse either in the forme of it, or the generall officers in it, which is the first branche in the description of Arbitrary Government.

The other Branche (wherein the maine question lyes) is concerninge the Rule: so as if it shall appeare allso, that the Governor & other officers are prescribed suche a Rule, as may be required of them in all their Administrations, then it must needs be granted, that this Government (even in the present state thereof) is, in no respecte, Arbitrarye.

I might shewe a cleare Rule out of the Patent it selfe, but seeing it is more particularly (& as it were *membratim*) deliniated in later Lawes, I will beginne there (3) 25–1636: It was ordered, that untill a bodye of ffundamentall Lawes (Agreeable to the word of God) were established, all causes should be heard & determined, accordinge to the Lawes allreadye in force: & where no Lawe is, there as neere the Lawe of God as maybe. To omitt many particular Lawes enacted uppon occasion, I will sett downe onely the first Authoritye in the Libertyes which is as heere followeth—

No mans life shalbe taken awaye: no mans honor or good name shalbe stayned: No mans person shalbe arrested, restrained, banished, dismembred, or any wayes punished: No man shalbe deprived of his wife or children: No mans goods or estate shalbe taken awaye from him: or in any waye endamaged, under colour of Lawe or Countenance of Authoritye unlesse it be by the vertue or equitye of some expresse Lawe of the Countrye, warrantinge the same, established by a generall Court & sufficiently published: or, in case of the defecte of a Lawe in any particular case, by the worde of God, and in capitall cases, or in cases concerninge dismembringe or Banishment, accordinge to that worde, to be Iudged by the Generall Court.

By these it appeares, that the Officers of this Bodye politick haue a Rule to walke by, in all their administrations, which Rule is the Worde of God, & such conclusions & deductions, as are, or shalbe, regularly drawne from thence.

All Commonwealthes haue had some principles, or fundamentalls, from which they haue framed deductions to particular cases, as occasion hathe required. And thoughe no Commonwealthe euer had, or can haue, a particular positive Rule, to dispence power, or Iustice by in every single case, yet where the fundamentalls, or generall Rule holde forth such directions as no great damage or injurye can befall, either the whol, or any particular parte, by any uniust sentence, or disorderlye proceedinge, without manifest breache of suche generall Rule, there the Rule may be required, & so the Government is regular & not Arbitrarye.

The ffundamentalls which God gave to the Commonwealth of Israell, were a sufficient Rule to them, to guide all their Affaires: we havinge the same, with all the Additions, explanations & deductions, which haue followed: it is not possible we should want a Rule in any case: if God give wisdome to discerne it. . . .

[446] England in the right constitution, is not an Arbitrary Government nor is ours of the Massachusetts: yet Iuries, both there & heer, give damages, which (in vulgar sense) are Arbitrary, in most cases: as in Actions of Slander, Trespasse, Batterye, Breach of Covenant, &c: all which concerne the Peoples Libertyes, no lesse than ffines & other penaltyes: And if 12: men, who haue no Callinge to Office, may (in expectation of Gods Assistance) be trusted with mens estates in a way of distributive

Iustice without a prescript Rule etc. why may not those whose callinge & Office hathe promise of Assistance, have like trust reposed in them, in vindictive Iustice?

In the Libertyes enacted heere of purpose to prevent Arbitrary Government, there are neer 40: Lawes, to the violation whereof no penaltye is prescribed: nor was ever moved.

God may pronounce Sentence against an Offender, before the offence be committed, bothe by his absolute Soveraintye, & allso because he foreseeth all ffacts, with all their Circumstances: & besides the least degree of the same offence deserves more than that full punishment before his Iustice: but man must proceede accordinge to his Commission: by which he cannot sentence another before he hathe offended, & the offence examined, proved, layd to the Rule, and weighed by all considerable circumstances, & Libertye given to the partye to answeare for himselfe: nor is there anything more preiudiciall to a subjects Libertye, than to be sentenced before his cause be hearde.

England is a State of long standing, yet we haue had more positive & more holesome Lawes enacted in our shorte tyme, than they had in many hundred yeares. . . .

Iustice ought to render to everye man accordinge to his deservings, eye for eye, hand for hand, etc: & Luk:12:47. . . .

Everye Lawe must be Iust in everye parte of it, but if the penaltye anexed be uniust, how can it be held forthe as a Iust Lawe? To prescribe a penaltye, must be by some Rule, other wise it is an vsurpation of Gods prerogative: but where the Lawe makers, or Declarers cannot finde a Rule for prescribinge a penaltye, if it come before the Iudges *pro re nata*, there it is determinable by a certaine Rule, namely, by an ordinance sett up of God for that purpose, which hathe a sure promise of Divine assistance, Exo: 21:22: Deut:16:18: Iudges & Officers shalt thou make &c, & they shall Iudge the people with Iust Iudgment. Deut:25:1:2: & 17:9:10:11. If a Lawe were made that if any man were founde drunken he should be punished by the Iudges according to the meritt of his offence: this is a Iust Lawe, because it is warranted by a Rule: but if a certaine penaltye were prescribed, this would not be iust, because it wants a Rule, but when suche a case is brought before the Iudges, & the qualitye of the person & other circumstances considered, they shall finde a Rule to Iudge by. . . .

Iudges are Gods upon earthe: therefore, in their Administra-

tions, they are to holde forthe the wisdome & mercye of God, (which are his Attributes) as well as his Iustice: as occasion shall require either in respecte of the qualitye of the person, or for a more generall good, or euident repentance, in some cases of less public consequence, or avoydinge imminent danger to the State, & suche like prevalent Considerations. Exo:22:8:9: for thefte & suche like Trespasses, double restitution was appointed by the Lawe: but Lev:6:2:5: in such cases, if the partye Confessed his sinne & brought his offeringe, he should onely restore the principall, & adde a fifthe part thereto. . . .

[454] This discourse is runne out to more length than was intended: the Conclusion is this: The Gouerment of the Massachusetts consists of Magistrates & Freemen: in the one is placed the Authoritye in the other the Libertye of the Commonwealth: either hath power to Acte, both alone, & both togither, yet by a distinct power, the one of Libertye, the other of Authoritye the Freemen Act of themselves in Electinge their Magistrates & Officers: The Magistrates Acte alone in all occurrences out of Court: and both Acte togither in the Generall Court: yet all limited by certaine Rules, bothe in the greater & smaller affaires: so as the Government is Regular in a mixt Aristocratie, & no wayes Arbitrary.

SPEECH ON LIBERTY AND AUTHORITY [1]

1645

. . . . The great questions that have troubled the country, are about the authority of the magistrates and the liberty of the people. It is yourselves who have called us to this office, and being called by you, we have our authority from God, in way of an ordinance, such as hath the image of God eminently stamped upon it, the contempt and violation whereof hath been vindicated with examples of divine vengeance. I entreat you to consider, that when you choose magistrates, you take them from among yourselves, men subject to like passions as you are. Therefore when you see infirmities in us, you should reflect upon your own, and that would make you bear the more with us, and not be severe

[1] John Winthrop, *The History of New England from 1630 to 1649*. Edited by James Savage. Boston: Little Brown and Company. 1853. Vol. II, pp. 228–30.

censurers of the failings of your magistrates, when you have continual experience of the like infirmities in yourselves and others. We account him a good servant, who breaks not his covenant. The covenant between you and us is the oath you have taken of us, which is to this purpose, that we shall govern you and judge your causes by the rules of God's laws and our own, according to our best skill. When you agree with a workman to build you a ship or house, etc., he undertakes as well for his skill as for his faithfulness, for it is his profession, and you pay him for both. But when you call one to be a magistrate, he doth not profess nor undertake to have sufficient skill for that office, nor can you furnish him with gifts, etc., therefore you must run the hazard of his skill and ability. But if he fail in faithfulness, which by his oath he is bound unto, that he must answer for. If it fall out that the case be clear to common apprehension, and the rule clear also, if he transgress here, the error is not in the skill, but in the evil of the will: it must be required of him. But if the case be doubtful, or the rule doubtful, to men of such understanding and parts as your magistrates are, if your magistrates should err here, yourselves must bear it.

For the other point concerning liberty, I observe a great mistake in the country about that. There is a twofold liberty, natural (I mean as our nature is now corrupt) and civil or federal. The first is common to man with beasts and other creatures. By this, man, as he stands in relation to man simply, hath liberty to do what he lists; it is a liberty to evil as well as to good. This liberty is incompatible and inconsistent with authority, and cannot endure the least restraint of the most just authority. The exercise and maintaining of this liberty makes men grow more evil, and in time to be worse than brute beasts: omnes sumus licentia deteriores. This is that great enemy of truth and peace, that wild beast, which all the ordinances of God are bent against, to restrain and subdue it. The other kind of liberty I call civil or federal; it may also be termed moral, in reference to the covenant between God and man, in the moral law, and the politic covenants and constitutions amongst men themselves. This liberty is the proper end and object of authority, and cannot subsist without it; and it is a liberty to that only which is good, just, and honest. This liberty you are to stand for, with the hazard (not only of your goods, but) of your lives, if need be.

Whatsoever crosseth this, is not authority, but a distemper thereof. This liberty is maintained and exercised in a way of subjection to authority; it is of the same kind of liberty wherewith Christ hath made us free. The woman's own choice makes such a man her husband; yet being so chosen, he is her lord, and she is to be subject to him, yet in a way of liberty, not of bondage; and a true wife accounts her subjection her honor and freedom, and would not think her condition safe and free, but in her subjection to her husband's authority. Such is the liberty of the church under the authority of Christ, her king and husband; his yoke is so easy and sweet to her as a bride's ornaments; and if through frowardness or wantonness, etc., she shake it off, at any time, she is at no rest in her spirit, until she takes it up again; and whether her lord smiles upon her, and embraceth her in his arms, or whether he frowns, or rebukes, or smites her, she apprehends the sweetness of his love in all, and is refreshed, supported, and instructed by every such dispensation of his authority over her. On the other side, ye know who they are that complain of this yoke and say, let us break their bands, etc., we will not have this man to rule over us. Even so, brethren, it will be between you and your magistrates. If you stand for your natural corrupt liberties, and will do what is good in your own eyes, you will not endure the least weight of authority, but will murmur, and oppose, and be always striving to shake off that yoke; but if you will be satisfied to enjoy such civil and lawful liberties, such as Christ allows you, then will you quietly and cheerfully submit unto that authority which is set over you, in all the administrations of it, for your good. Wherein, if we fail at any time, we hope we shall be willing (by God's assistance) to hearken to good advice from any of you, or in any other way of God; so shall your liberties be preserved, in upholding the honor and power of authority amongst you. . . .

THOMAS HOOKER

Like John Cotton Thomas Hooker fled from England rather than appear before the Court of High Commission to answer to charges of violating the religious laws of the state. For three years he was pastor of the church at Newtowne (Cambridge), but, finding himself little more harmonious with the authorities in church and state than had been the case in England, he moved with many of his congregation in 1636 to the Connecticut valley. There he was a leader in founding a more democratic theocracy. He had an important part in framing the Fundamental Orders of Connecticut. His most important writing is the *Survey of the Summe of Church Discipline* (1648), a work in defence of the New England church system.

LETTER TO GOVERNOR WINTHROP[1]

1638

. . . And here, I fully assent to those staple principles which you set down; to wit, that the people should choose some from amongst them—that they should refer matter of counsel to their counsellors, matter of judicature to their judges: only the question here grows—what rule the judge must have to judge by; secondly, who those counsellors must be.

That in the matter which is referred to the judge, the sentence should lie in his breast, or be left to his discretion, according to which he should go, I am afraid it is a course which wants both safety and warrant. I must confess, I ever looked at it as a way which leads directly to tyranny, and so to confusion, and must plainly profess, if it was in my liberty, I should choose neither to live nor leave my posterity under such a government. Sit liber judex, as the lawyers speak. 17 Deut., 10, 11.—Thou shalt observe to do according to all that they inform, according to the *sentence of the Law*. Thou shalt seek the Law at his mouth: not ask what his discretion allows, but what the Law requires. And therefore the Apostles, when the rulers and high priest passed sentence against their preaching, as prejudicial to the State, the Apostle Peter made it not dainty to profess and practice contrary to their charge, because their sentence was contrary to law, though they might have pretended discretion and depth of wisdom and policy in their charge.

[1] *Collections of the Connecticut Historical Society*. Hartford: 1860. Vol. I, pp. 11–12.

And we know in other countries, had not the law overruled the lusts of men and the crooked ends of judges, many times, both places and people had been, in reason, past all relief, in many cases of difficulty. You will know what the Heathen man said, by the candle-light of common-sense: The law is not subject to passion, nor to be taken aside with self-seeking ends, and therefore ought to have chief rule over rulers themselves.

It's also a truth, that counsel should be sought from counsellors; but the question yet is, who those should be. Reserving smaller matters, which fall in occasionally in common course, to a lower counsel, in matters of greater consequence, which concern the common good, a general counsel, chosen by all, to transact businesses which concern all, I conceive, under favour, most suitable to rule and most safe for relief of the whole. This was the practice of the Jewish church, directed by God, Deut. 17: 10, 11; 2 Chron., 19; and the approved experience of the best ordered States give in evidence this way. Salomon's one wise man, and the one wise woman in Abel that delivered the city, shows the excellency of wisdom and of counsel where it is, but doth not conclude that one or few should be counsellors, since "in the multitude of counsellors there is safety."

ABSTRACT OF A SERMON DELIVERED AT HARTFORD, MAY 31, 1638[1]

Text: Deut. i.:13. "Take you wise men, and understanding, and known among your tribes, and I will make them rulers over you." Captains over thousands, and captains over hundreds—over fifties—over tens, &c.

Doctrine. I. That the choice of public magistrates belongs unto the people, by God's own allowance.

II. The privilege of election, which belongs to the people, therefore must not be exercised according to their humours, but according to the blessed will and law of God.

III. They who have power to appoint officers and magistrates, it is in their power, also, to set the bounds and limitations of the power and place unto which they call them.

[1] *Collections of the Connecticut Historical Society.* Vol. I, pp. 20–21.

Reasons. 1. Because the foundation of authority is laid, firstly, in the free consent of the people.

2. Because, by a free choice, the hearts of the people will be more inclined to the love of the persons [chosen] and more ready to yield [obedience.]

3. Because, of that duty and engagement of the people.

Uses. The lesson taught is threefold:—

1st. There is matter of thankful acknowledgment, in the [appreciation] of God's faithfulness toward us, and the permission of these measures that God doth command and vouchsafe.

2dly. Of reproof—to dash the conceits of all those that shall oppose it.

3dly. Of exhortation—to persuade us, as God hath given us liberty, to *take* it.

And lastly—as God hath spared our lives, and given us them in liberty, so to seek the guidance of God, and to choose *in* God and *for* God.

JOHN DAVENPORT

A DISCOURSE ABOUT CIVIL GOVERNMENT IN A NEW PLANTATION [1]

1653

John Davenport came to Massachusetts Bay in 1637 but remained only one year. In 1638 he was among the group which founded New Haven. For thirty years he was probably the most influential minister in that community. He is the principal author of the Fundamental Articles of New Haven (1639). This *Discourse* was published a number of years after it was written, and was originally attributed to John Cotton, whose name appears on the title page.

[14] *Whether a new Plantation, where all or the most considerable part of free Planters profess their purpose and desire of securing to themselves and to their posterity, the pure and peaceable enjoyment of Christ's Ordinance; Whether, I say, such Planters are bound in laying the Foundations of Church and Civil State, to take order, that all the free Burgesses be such as are in fellowship of the Church or*

[1] Cambridge: Samuel Green & Marmaduke Johnson. 1653.

Churches which are, or may be gathered according to Christ; and that those free Burgesses have the only power of chusing from among themselves Civil Magistrates, and men to be intrusted with transacting all publick Affairs of Importance, according to the rules and directions of Scripture?

I hold the Affirmative part of this Question upon this ground, that this course will most conduce to the good of both States; and by consequence to the *common welfare* of *all*, whereunto all men are bound principally to attend in laying the *Foundation of a Common-wealth*, lest Posterity rue the first Miscarriages, when it will be too late to redress them. They that are skilful in Architecture observe, *that the breaking or yielding of a stone in the groundwork of a Building but the breadth of the back of a knife, will make a cleft of more then half a foot in the Fabrick aloft: So important* (saith mine Author) *are fundamental Errours.* The Lord awaken us to look to it in time, and send us his Light and Truth to lead us into the safest wayes in these beginnings.

The Question being thus stated, I now proceed with Gods help to prove the Affirmative part: and thus I argue, to prove that *the Form of Government which is described in the true stating of the Question is the best, and by consequence, that men that are free to chuse* (*as in new Plantations they are*) *ought to establish it in a Christian Commonwealth.*

Theocratie, or *to make the Lord God our Governour, is the best Form of Government in a Christian Common-wealth, and which men that are free to chuse* (*as in new Plantations they are*) *ought to establish. The Form of Government described in the true stating of the Question is* Theocratic, *or that wherein we make the Lord God our Governour. Therefore that Form of Government which is described in the true stating of the Question, is the best Form of Government in a Christian Commonwealth, and which men that are free to chuse* (*as in new Plantations they are*) *ought to establish.* The proposition is clear of it self. The Assumption I prove thus:

That Form of Government where 1. The people that have the power of chusing their Governors are in Covenant with God. 2. *Wherein the men chosen by them are godly men, and fitted with a spirit of Government:* 3. *In which the Laws they rule by are the Laws of God:* 4. *Wherein Laws are executed, Inheritances allotted, and civil differences are composed, according to Gods appointment:* 5. *In which men of God are consulted with in all hard cases, and in mat-*

ters of Religion, is the Form which was received and established among the people of *Israel* whil'st the Lord God was their Governour, as the places of Scripture alledged shew; and is the very same with that which we plead for, as will appear to him that shall examine the true stating of the Question. The Conclusion follows necessarily.

That Form of Government which giveth unto Christ his due preheminence, is the best Form of Government in a Christian Commonwealth, and which men that are free to chuse (as in new Plantations they are) ought to establish. The Form of Government described in the true stating of the Question, is that which giveth unto Christ his due preheminence. Therefore the Form of Government which is described in the true stating of the Question, is the best Form of Government in a Christian Commonwealth, and which men that are free to chuse (as in new Plantations they are) ought to establish.

The Proposition is proved out of two places of Scripture, *Col.* I.15. *to* 19, with *Eph.* I.21, 22. From which Texts it doth appear, that it is a preheminence due to Christ, that all things, and all Governments in the world, should serve to Christs ends, for the welfare of the Church whereof he is the Head. For I. In relation to God, he hath this by Right of Primogeniture, as he is the *first-born, and so Heir of all things, higher then the Kings of the earth.* 2. In relation to the World, it is said, *All things were made by him, and for him, and do consist in him,* and therefore it is a preheminence due to him, that they all serve him. 3. In relation to the Church, it is said, *He hath made all things subject under his feet, and hath given him over all things to be Head of the Church, that in all things he might have the preheminence.* And indeed that he upholdeth the Creatures, and the Order that is in them, it is for his Churches sake; when that is once compleat, the world shall soon be at an end. And if you reade the stories of the great Monarchies that have been, and judge of them by Scripture-light, you will finde they stood or fell, according as God proposed to make use of them about some service to be done about his Church. So that the onely considerable part for which the world standeth at this day, is the Church: and therefore it is a Preheminence due to Christ, that his Headship over the Church should be exalted and acknowledged, and served by all. In which respect also the Title of *The first-born* is given to the Members of the Church, and they are called *The first-fruits of his Creatures,* to shew both their pre-

heminence above others, and that they are fittest to serve to Gods ends.

The Assumption (*That the Form of Government described in the true stating of the Question, doth give unto Christ his due preheminence*) will easily be granted by those that shall consider what Civil Magistrates and Rulers in the Commonwealth those are, who are fittest to serve to Christ's ends for the good and welfare of his Church; which will be evident from two places of Scripture: First, in *Psa.* 2.10, 11, 12 you have a description of those that are fitted to order Civil Affairs in their Magistracy to Christ's ends; they are such as are not onely wise and learned in matters of Religion, but also do reduce their knowledge into practice: they *Worship the Lord in fear;* and not only so, but *Kiss the Son,* which was a solemn & outward *Profession of love* and *of Subjection* and *of Religious Worship,* and so fitly serveth to express their joyning themselves to the Church of Christ. Secondly, in *Isa.* 49.23 it is promised to the Church, that *Kings and Queens shall be their nursing-fathers and nursing-mothers,* and therefore it is added, *They shall worship with their faces to the earth, and lick up the dust of thy feet;* which is a proverbial expression of their voluntary humbling of themselves to Christ in his Ordinances, (taken from the manner of the Persians, in declaring their Subjection to their Emperour, which the Apostle calls *a voluntary submission to the Gospel,* which is the spirit of the Members of the Churches of Christ. And for this Reason it is, that the Lord, when he moulded a Communion among his own People, wherein all Civil Administrations should serve to holy ends, he described the men to whom that Trust should be committed, by certain Properties, which also qualified them for fellowship in Church-Ordinances, as *Men of ability and power over their own affections;* secondly, *fearing God, Truly Religious, Men of Courage, hating Covetousness, men of Wisdom, men of understanding, and men known* or approved of *among the people of God, & chosen by the Lord from among their Brethren,* & not a stranger, which is no Brother: the most of which concurre to describe Church members in a Church rightly gathered and ordered, who are also in respect of their union with Christ, and fellowship together, called *Brethren* frequently in the New Testament, wherein the equity of that Rule is established to us. Object. *Christ will have his due Preheminence, though the Civil Rulers oppose him, and persecute the Churches, as in Rome: Therefore it is not*

necessary that this course be taken in Civil Affairs to establish Christs Preheminence. Ans. The Question is of a Christian Commonwealth that should willingly subject themselves to Christ, not of a Heathen State that shall perforce be subdued unto Christ. It is concerning what Gods people being free should chuse, not what his enemies are compell'd unto. . . .

ROGER WILLIAMS

THE BLOUDY TENENT OF PERSECUTION FOR CAUSE OF CONSCIENCE, DISCUSSED, IN A CONFERENCE BETWEEN TRUTH AND PEACE.[1]

1644

The teachings of Roger Williams were so disturbing to the rulers of Massachusetts Bay that a sentence of banishment was imposed upon him in 1635. He was subsequently the founder of another colony at Providence. This selection is from one of two long tracts written in refutation of the doctrines of John Cotton. Like most of his writings it was published in England during one of his visits there. The influence of his ideas was considerable in the mother country and has been greater in America than that of any other author before the Revolution. He was instrumental in securing a royal charter for Rhode Island and Providence Plantations in 1663 which embodied to a remarkable degree his theories of religious toleration and popular government. This charter continued to be the fundamental law of the colony and state until 1842.

Preface

First, That the blood of so many hundred thousand soules of *Protestants* and *Papists*, spilt in the *Wars of present* and *former Ages*, for their respective *Consciences*, is not *required* nor *accepted* by *Jesus Christ* the *Prince* of *Peace*.

Secondly, Pregnant *Scripturs* and *Arguments* are throughout the Worke proposed against the *Doctrine* of *persecution* for *cause* of *Conscience*.

Thirdly, Satisfactorie Answers are given to *Scriptures*, and objections produced by Mr. *Calvin*, *Beza*, Mr. *Cotton*, and the Min-

[1] *Publications of the Narragansett Club.* Providence: 1867. First Series, vol. III.

isters of the New England Churches and others former and later, tending to prove the *Doctrine of persecution* for cause of *Conscience.*

Fourthly, The *Doctrine of persecution* for cause of *Conscience,* is proved guilty of all the *blood* of the *Soules* crying for *vengeance* under the *Altar.*

Fifthly, All *Civill States* with their *Officers* of *justice* in their respective *constitutions* and *administrations* are proved *essentially Civill,* and therefore not *Judges, Governours* or *Defendours* of the *Spirituall* or *Christian state* and *Worship.*

Sixtly, It is the will and command of *God,* that (since the comming of his Sonne the *Lord Jesus*) a *permission* of the most *Paganish, Jewish, Turkish,* or *Antichristian consciences* and *worships,* bee granted to *all* men in all *Nations* and *Countries:* and they are onely to bee *fought* against with that *Sword* which is only (in *Soule matters*) *able* to *conquer,* to wit, the *Sword of Gods Spirit,* the *Word* of *God.*

Seventhly, The *state* of the Land of *Israel,* the *Kings* and *people* thereof in *Peace & War,* is proved *figurative* and *ceremoniall,* and no *patterne* nor *president* for any *Kingdome* or *civill state* in the *world* to follow.

Eightly, *God* requireth not an *uniformity* of *Religion* to be *inacted* and *inforced* in any *civill state;* which inforced *uniformity* (sooner or later) is the greatest occasion of *civill Warre, ravishing* of *conscience, persecution* of *Christ Jesus* in his servants, and of the *hypocrisie* and *destruction* of *millions* of *souls.*

Ninthly, In holding an inforced *uniformity* of *Religion* in a *civill state,* wee must necessarily *disclaime* our desires and hopes of the *Iewes conversion* to *Christ.*

Tenthly, An inforced *uniformity* of *Religion* throughout a *Nation* or *civill state,* confounds the *Civill* and *Religious,* denies the principles of Christianity and civility, and that *Jesus Christ* is come in the Flesh.

Eleventhly, The permission of other *consciences* and *worships* then a state professeth, only can (according to God) procure a firme and lasting *peace,* (good *assurance* being taken according to the *wisedome* of the *civill state* for *uniformity* of *civill obedience* from all sorts.)

Twelfthly, lastly, true *civility* and *Christianity* may both flourish in a *state* or *Kingdome,* notwithstanding the *permission* of divers and contrary *consciences,* either of *Iew* or *Gentile.* . . .

Chapter VI

. . . . The *Church* or *company* of *worshippers* (whether true or false) is like unto a Body or Colledge of *Physitians* in a *Citie;* like unto a *Corporation, Society, or Company* of *East-Indie* or *Turkie-Merchants,* or any other *Societie* or *Company* in *London:* which Companies may hold their *Courts,* keep their *Records,* hold *disputations;* and in matters concerning their *Societie,* may dissent, divide, breake into *Schismes* and *Factions,* sue and implead each other at the *Law,* yea wholly breake up and dissolve into pieces and nothing, and yet the *peace* of the *Citie* not be in the least measure impaired or disturbed; because the *essence* or being of the *Citie,* and so the *well-being* and *peace* thereof is essentially distinct from those particular *Societies;* the *Citie-Courts, Citie-Lawes, Citie-punishments* distinct from theirs. The *Citie* was before them, and stands absolute and intire, when such a *Corporation* or *Societie* is taken down. For instance further, The *City* or *Civill state* of *Ephesus* was essentially distinct from the *worship* of *Diana* in the Citie, or of the *whole city.* Againe, the *Church* of *Christ* in *Ephesus* (which were Gods people, converted and call'd out from the *worship* of that *City* unto *Christianitie* or *worship* of *God* in *Christ*) was distinct from both. . . .

. . . . And notwithstanding these spirituall oppositions in point of *Worship* and *Religion,* yet heare we not the least noyse (nor need we, if Men keep out the Bond of *Civility*) of any *Civil breach,* or *breach* of *Civill peace* amongst them: and to persecute Gods people there for Religion, that only was a breach of Civilitie it selfe. . . .

Chapter XXXVII

Where I observe that he implyes that beside the *censure* of the *Lord Jesus,* in the hands of his *spirituall governours,* for any spirituall evill in *life* or *doctrine,* the *Civill Magistrate* is also to inflict *corporall punishment* upon the contrary minded: whereas

First, if the *Civill Magistrate* be a *Christian,* a *Disciple* or follower of the meeke *Lambe* of *God,* he is bound to be far from destroying the *bodies of men,* for refusing to receive the *Lord Jesus Christ,* for otherwise hee should not know (according to this speech of the *Lord Jesus*) what *spirit* he was of, yea and to be ignorant of the sweet end of the comming of the *Son of Man,* which was not

to destroy the *bodies* of *Men*, but to save both *bodies* and *soules*, *vers.* 55.56.

Secondly, if the *Civill Magistrate*, being a *Christian*, gifted, *prophesie* in the *Church*, I *Corinth.* I.14. although the *Lord Jesus Christ*, whom they in their owne persons hold forth, shall be refused, yet they are here forbidden to call for fire from *heaven*, that is, to procure or inflict any corporall *judgement* upon such *offenders*, remembring the end of the *Lord Jesus* his comming, not to *destroy* mens lives, but to *save* them.

Lastly, this also concernes the *conscience* of the *Civill Magistrate*, as he is bound to preserve the *civill peace* and quiet of the *place* and people under him, he is bound to suffer no man to breake the *Civill Peace*, by laying hands of *violence* upon any, though as vile as the *Samaritanes* for not receiving of the *Lord Jesus Christ.*

It is indeed the *ignorance* and blind *zeale* of the second *Beast*, the *false Prophet*, *Rev.* 13.13. to perswade the *civill Powers* of the earth to persecute the Saints, that is, to bring fiery *judgements* upon men in a *judiciall way*, and to pronounce that such *judgements* of *imprisonment*, *banishment*, *death*, proceed from Gods righteous *vengeance* upon such *Hereticks.* So dealt divers, *Bishops* in *France*, and *England* too in Queene *Maries* dayes with the Saints of God at their putting to death, declaiming against them in their Sermons to the people, and proclaiming that these persecutions even unto death were Gods *just judgements from heaven upon these Heretickes.* . . .

Chapter XLV

I observe that as *civill weapons* are improper in this businesse, and never able to effect ought in the *soule:* So (although they were proper, yet) they are *unnecessary*, for if as the *Spirit* here saith (and the *Answerer* grants) *Spirituall weapons* in the hand of *Church Officers* are able and ready to take *vengeance* on all disobedience, that is *able* and mighty, sufficient and ready for the *Lords* worke either to *save* the soule, or to *kill* the soule or whomsoever, be the party or parties opposite, in which respect I may againe remember that speech of *Job*, How hast thou helped him that hath no power? *Job.* 26. . . .

Will the *Lord Jesus* (did He ever in His owne Person practice, or did he appoint to) joyne to His *Breastplate* of *Righteousness*, the

breastplate of *iron* and *steele?* to the *Helmet* of *righteousnesse* and *salvation* in *Christ*, an helmet and crest of *iron*, *brasse*, or *steel*, a target of wood to His shield of Faith? His two *edged sword* comming forth of the mouth *Jesus*, the *materiall sword*, the worke of Smiths and Cutlers? or a girdle of shooes leather to the girdle of truth, &c. Excellently fit and proper is that *alarme* and *item*, *Psal.* 2. Be *wise* therefore O ye *Kings* (especially those ten *Horns*, *Rev.* 17.) who under pretence of fighting our *Christ Jesus* give their power to the *Beast* against *Him*, and be warned ye *Judges* of the Earth: *Kisse the Son*, that is with *subjection* and *affection*, acknowledge Him only the *King* and *Judge* of *soules* (in that power bequeathed to His *Ministers* and *Churches*) lest if His wrath be kindled, yea but a little, then *blessed* are they that *trust in* Him. . . .

Chapter LX

. . . . I affirme that that State policy and State necessity, which (for the *peace* of the *State* and preventing of Rivers of *civill Blood*) permits the *Consciences* of men, will bee found to agree most punctually with the *Rules* of the best *Politician* that ever the *World* saw, the *King* of *Kings*, and *Lord* of *Lords*, in comparison of whom *Salomon* himselfe had but a *drop* of *wisedome*, compared to *Christs* Ocean, and was but a *Farthing Candle* compared with the *All* and *Ever glorious Son of Righteousnesse*.

That absolute Rule of this great *Politician* for the peace of the *Field*, which is the *World*, and for the good and peace of the *Saints*, who must have a *civill* being in the *World*, I have discoursed of in his *command* of *permitting* the *Tares*, that is, *Antichristians* or false *Christians* to be in the *Field* of the *World*, growing up together with the true *Wheat*, true *Christians*. . . .

Chapter XCII

First, whereas they say, that the *Civill Power* may erect and establish what *forme* of *civill Government* may seeme in *wisedome* most meet, I acknowledge the *proposition* to be most true, both in it self, and also considered with the end of it, that a *civill Government* is an *Ordinance* of *God*, to conserve the *civill peace* of people, so farre as concernes their *Bodies* and *Goods*, as formerly hath been said.

But from this *Grant* I infer, (as before hath been touched) that the *Soveraigne, originall,* and *foundation* of *civill power* lies in the *people,* (whom they must needs meane by the *civill power* distinct from the *Government* set up.) And if so, that a People may erect and establish what *forme* of *Government* seemes to them most meete for their *civill condition:* It is evident that such *Governments* as are by them erected and established, have no more *power,* nor for no longer time, then the *civill power* or people consenting and agreeing shall betrust them with. This is cleere not only in *Reason,* but in the experience of all *commonweales,* where the people are not deprived of their *naturall freedome* by the power of *Tyrants.*

And if so, that the Magistrates receive their power of governing the Church, from the People; undeniably it followes, that a *people,* as a *people,* naturally considered (of what *Nature* or *Nation* soever in *Europe, Asia, Africa* or *America*) have fundamentally and originally, as men, a power to governe the *Church,* to see her doe her *duty,* to correct her, to redresse, reforme, establish, &c. And if this be not to pull *God* and *Christ,* and *Spirit* out of *Heaven,* and subject them unto *naturall,* sinfull, inconstant men, and so consequently to *Sathan* himselfe, by whom all *peoples* naturally are guided, let *Heaven* and *Earth* judge.

Peace. It cannot by their owne *Grant* be denied but that the *wildest Indians* in *America* ought (and in their kind and severall degrees doe) to agree upon some *formes* of *Government,* some more *civill,* compact in Townes, &c. some lesse. As also that their *civill* and *earthly Government* be as lawfull and true as any *Governments* in the *World,* and therefore consequently their *Governors* are *Keepers* of the *Church* or both *Tables,* (if any Church of Christ should arise or be amongst them:) and therefore lastly, (if *Christ* have betrusted and charged the *civill* Power with his *Church*) they must judge according to their *Indian* or *American consciences,* for other *consciences* it cannot be supposed they should have. . . .

Chapter CXX

This *civill* Nature of the *Magistrate* we have proved to receive no *addition* of *power* from the *Magistrates* being a *Christian,* no more then it receives *diminution* from his not being a *Christian:* even as the *Common-weale* is a true *Common-weale,* although it have not heard of *Christianitie;* and *Christianitie* professed in it

(as in *Pergemus, Ephesus,* &c.) makes it ne're no more Commonweale, and *Christianitie* taken away, and the *candlestick* removed, makes it ne're the lesse a Commonweale.

Fifthly, the *Spirit* of *God* expresly relates the worke of the *civill Magistrate* under the *Gospel,* Rom. 13. expresly mentioning (as the *Magistrates* object) the duties of the *second Table,* concerning the *bodies* and *goods* of the *subject.*

The *reward* or *wages* which people owe for such a worke, to wit, (not the *contribution* of the *Church* for any *spirituall* work, but) *tribute, toll, custome,* which are *wages* payable by all sorts of men, *Natives* and *Forreigners,* who enjoy the same benefit of *publick peace* and *commerce* in the *Nation.*

Sixthly, Since the *civill Magistrate,* whether *Kings* or *Parliaments, States,* and *Governours,* can receive no more in *justice* then what the People give, and are therefore but the *eyes* and *hands* and *instruments* of the people (simply considered, without respect to this or that *Religion*) it must inevitably follow (as formerly I have touched) that if *Magistrates* have received their power from the *people,* then the greatest number of the people of every Land have received from *Christ Jesus* a power to *establish, correct, reforme* his *Saints* and *servants,* his *wife* and *spowse,* the *Church:* And she that by the expresse *word* of the *Lord* (*Psal.* 149) binds *Kings* in *chaines,* and *Nobles* in *links* of *iron,* must her selfe be subject to the changeable pleasures of the people of the *World* (which lies in *wickednesse,* I *John* 5.) even in matters of Heavenly and *spirituall* Nature.

Hence therefore in all controversies concerning the Church, Ministrie and worship, the last Appeale must come to the Bar of the People or Commonweal, where all may personally meet, as in some Commonweales of small number, or in greater by their Representatives. . . .

Chapter CXIII

Thirdly, what imprudence and *indiscretion* is it in the most common affaires of Life, to conceive that *Emperours, Kings* and *Rulers* of the earth must not only be qualified with *politicall* and *state abilities* to *make* and *execute* such *Civill Lawes* which may concerne the common *rights, peace* and *safety* (which is worke and businesse, load and burthen enough for the ablest shoulders in the

Commonweal) but also furnished with such *spirituall* and heavenly *abilities* to governe the *Spirituall* and *Christian Commonweale*, the *flocke* and *Church* of *Christ*, to *pull downe*, and *set up Religion*, to *judge*, *determine* and *punish* in *Spirituall controversies*, even to *death* or *banishment:* And beside, that not only the severall sorts of *civill Officers* (which the people shall choose and set up) must be so authorised, but that all respective *Commonweales* or *Bodies* of people are charged (*much more*) by *God* with this *worke* and *busines*, radically and fundamentally, because all true *civill Magistrates*, have not the least *inch* of *civill power*, but what is measured out to them from the free consent of the *whole:* even as a *Committee* of *Parliament*, cannot further act then the power of the *House* shall arme and enable them. . . .

JOHN WISE

A VINDICATION OF THE GOVERNMENT OF NEW-ENGLAND CHURCHES [1]

1717

Although John Wise was the son of a man who came to New England as an indentured servant, he was himself a graduate of Harvard College and a minister. He wrote the most notable defence of the congregational principle of church government when an attempt was made early in the eighteenth century to bring the separate churches under closer supervision and control. Although a large part of the *Vindication* deals solely with politics, it was intended to have application to the government of the church, rather than to the government of the state. It is particularly interesting as being one of the first indications of the importation by the colonists of Continental political theory and of its adaptation to meet local needs.

[32] I shall disclose several Principles of Natural Knowledge, plainly discovering the Law of Nature, or the true sentiments of Natural Reason, with respect to Man's Being and Government. And in this Essay I shall peculiarly confine the discourse to two heads, *viz.*

[1] Boston: N. Boone. 1717.

1. Of the natural [in distinction to the civil], and then,

2. Of the Civil Being of Man. And I shall Principally take Baron *Puffendorff* for my Chief Guide and Spokes-man.

1. I shall consider man in a state of Natural Being, as a Free-Born Subject under the Crown of Heaven, and owing Homage to none but God Himself. It is certain Civil Government in General is a very Admirable Result of Providence, and an Incomparable Benefit to Mankind, yet must needs be acknowledged to be the Effect of Humane Free-Compacts and not of Divine Institution; it is the Produce of Man's Reason, of Humane and Rational Combinations, and not from any direct Orders of Infinite Wisdom, in any positive Law wherein is drawn up this or that Scheme of Civil Government. Government [says the Lord *Warrington*] is necessary —in that no Society of Men can subsist without it; and that Particular Form of Government is necessary which best suits the Temper and Inclination of a People. Nothing can be God's ordinance, but what he has particularly Declared to be such; there is no particular form of Civil Government described in God's Word, neither does Nature prompt it. . . .

The prime immunity in Man's State, is that he is most properly the Subject of the Law of Nature. . . .

. . . . That which is to be drawn from Man's Reason, flowing from the true Current of that Faculty, when unperverted, may be said to be the Law of Nature; on which account, the Holy Scriptures declare it written on Men's hearts. For being endowed with a Soul, you may know from your self, how, and what you ought to act, Rom. 2:14. *These having not a law, are a law to themselves.* So that the meaning is, when we acknowledge the Law of Nature to be the dictate of Right Reason, we must mean that the Understanding of Man is endowed with such a power, as to be able, from the contemplation of Humane Condition to discover a necessity of Living agreeably with this Law; and likewise to find out some Principle, by which the Precepts of it may be clearly and so solidly Demonstrated. The way to discover the Law of Nature in our own state, is by a narrow Watch, and accurate Contemplation of our Natural Condition and propensions. . . .

. . . . But, moreover, the foundation of the Law of Nature with relation to Government, may be thus Discovered, scil. Man is a Creature extremely desirous of his own Preservation; of himself he is plainly Exposed to many Wants, unable to secure his own safety

and Maintenance without Assistance of his fellows; and he is also able of returning Kindness by the furtherance of mutual Good; but yet Man is often found to be Malicious, Insolent, and easily Provoked, and as powerful in Effecting mischief as he is ready in designing it. Now that such a Creature may be Preserved, it is necessary that he be Sociable; that is, that he be capable and disposed to unite himself to those of his own species, and to Regulate himself towards them, that they may have no fair Reason to do him harm; but rather incline to promote his Interests, and secure his Rights and Concerns. This then is a fundamental law of nature, that every man as far as in him lies, do maintain a Sociableness with others, agreeable with the main end and disposition of humane Nature in general. For this is very apparent, that Reason and Society render Man the most potent of all Creatures. And Finally, from the principles of sociableness it follows as a fundamental Law of Nature, that man is not so wedded to his own Interest, but that he can make the Common good the mark of his aim; and hence he becomes Capacitated to enter into a Civil State by the Law of Nature; for without this property in Nature, viz. Sociableness, which is for Cementing of parts, every Government would soon moulder and dissolve.

2. The Second Great Immunity of Man is an Original Liberty Instampt upon his Rational Nature. He that intrudes upon this Liberty, Violates the Law of Nature. In this Discourse I shall wave the Consideration of Mans Moral Turpitude but shall view him Physically as a Creature which God has made and furnished essentially with many Ennobling Immunities, which render him the most August Animal in the World, and still, whatever has happened since his Creation, he remains at the upper-end of Nature, and as such is a Creature of a very Noble Character. For as to his dominion, the whole frame of the Lower Part of the Universe is devoted to his use, and at his Command; and his Liberty under the Conduct of Right Reason is equal with his trust. Which Liberty may be briefly Considered, Internally as to his Mind, and Externally as to his Person.

1. The Internal Native Liberty of Man's Nature in general implies, a faculty of Doing or Omitting things according to the Direction of his Judgment. But in a more special meaning, this Liberty does not consist in a loose and ungovernable Freedom, or in an unbounded License of Acting. Such License is disagreeing

with the condition and dignity of Man, and would make Man of a lower and meaner Constitution than Bruit Creatures; who in all their Liberties are kept under a better and more Rational Government by their Instincts. Therefore, as *Plutarch;* says, *Those persons only who live in Obedience to Reason, are worthy to be accounted free: They alone live as they Will, who have learnt what they ought to Will.* So that the True Natural Liberty of man, such as really and truly agrees to him must be understood, as he is Guided and Restrained by the Tyes of Reason and Laws of Nature; all the rest is Brutal, if not worse.

2. Man's External Personal, Natural Liberty, antecedent to all Human parts or Alliances, must also be considered. And so every Man must be conceived to be perfectly in his own Power and disposal, and not to be controuled by the Authority of any other. And thus every Man must be acknowledged equal to every Man, since all Subjection and all Command are equally banished on both sides; and considering all Men thus at Liberty, every Man has a Prerogative to Judge for himself, *viz.* What shall be most for his Behoof, Happiness, and Well-being.

3. The Third Capital Immunity belonging to Man's Nature, is an equality amongst Men; Which is not to be denyed by the Law of Nature, till Man has Resigned himself with all his Rights for the sake of a Civil State; and then his Personal Liberty and Equality is to be cherished and preserved to the highest degree, as will consist with all just distinctions amongst Men of Honor, and shall be agreeable with the publick Good. . . .

[42] . . . . And though as *Hensius* paraphrases upon *Aristotle's* Politicks to this Purpose, *viz. Nothing is more suitable to Nature, than that those who Excel in Understanding and Prudence, should Rule and Controul those who are less happy in those Advantages,* &. Yet we must note, that there is room for an answer, scil. That it would be the greatest absurdity to believe, that Nature actually Invests the Wise with a Sovereignty over the weak; or with a Right of forcing them against their Wills; for that no Sovereignty can be Established, unless some Human Deed or Covenant Precede: Nor does natural fitness for government make a man presently governor over another; for that as *Ulpian* says, *by a natural right all men are born free;* and Nature having set all Men upon a level and made them equals, no servitude or subjection can be conceived without Inequality; and this cannot be made without Usurpation or Force

in Others, or voluntary Compliance in those who resign their Freedom, and give away their degree of Natural Being. And thus we come,

2. To consider Man in a Civil State of Being, wherein we shall observe the great difference between a Natural and Political State; for in the latter State many great Disproportions appear, or at least many obvious Distinctions are soon made amongst men, which Doctrine is to be laid open under a few heads.

1. Every man, considered in a Natural State, must be allowed to be Free and at his Own Dispose; yet to suit mans inclinations to Society, and in a peculiar manner to gratify the Necessity he is in of Public Rule and Order, he is impelled to enter into a Civil Community; and divests himself of his Natural Freedom, and puts himself under Government, which, Amongst other things, comprehends the power of Life and Death over him, together with Authority to Injoyn him some things to which he has an Utter Aversation, and to prohibit him other things for which he may have as strong an inclination; so that he may be often, under this authority, obliged to sacrifice his Private for the Public Good. So that though Man is inclined to Society, yet he is driven to a Combination by Great Necessity. For that the true and leading cause of Forming Governments and yielding up Natural Liberty, and throwing man's Equality into a Common Pile to be new cast by the rules of Fellowship, was really and truly to Guard themselves against the Injuries men were liable to interchangeably; for none so good to Man as Man, and yet none a Greater Enemy. So that,

2. The first Humane Subject and Original of Civil Power is the People. For as they have a Power every man over himself in a Natural State, so upon a Combination they can and do bequeath this power unto Others; and settle it according as their United Discretion shall Determine. For that this is very plain, that when the Subject of Sovereign Power is quite extinct, that Power returns to the People again. And when they are free, they may set up what Species of Government they please; or if they rather incline to it, they may subside into a State of Natural Being, if it be plainly for the best. In the *Eastern* Country of the *Mogul*, we have some Resemblance of the case, for upon the death of an Absolute Monarch, they live so many days without a Civil Head; but in that *Interregnum* those who survive the vacancy are glad to get into a Civil State again; and usually they are in a very Bloody Condi-

tion when they return under the Covert of a new Monarch; this project is to indear the People to a Tyranny, from the Experience they have so lately had of an Anarchy.

3. The formal Reason of Government is the Will of a Community yielded up and surrendered to some other Subject, either of one particular Person or more, Conveyed in the following manner.

Let us conceive in our Mind a multitude of Men, all Naturally Free and Equal; going about voluntarily to Erect themselves into a new Common-wealth. Now their Condition being such, to bring themselves into a Politick Body they must needs Enter into divers Covenants.

1. They must Interchangeably each Man Covenant to joyn in one lasting Society, that they may be capable to concert the measures of their safety, by a Publick Vote.

2. A Vote or Decree must then nextly pass to set up some particular species of Government over them. And if they are Joyned in their first Compact upon absolute Terms to stand to the Decision of the first Vote concerning the Species of Government: Then all are bound by the Majority to acquiesce in that Particular Form thereby settled, though their own private Opinion incline them to some other Model.

3. After a decree has specified the Particular form of Government, then there will be need of a New Covenant, whereby those on whom Sovereignty is conferred, engage to take care of the Common Peace and Welfare. And the Subjects on the other hand, to yield them faithful Obedience. In which covenant is Included that Submission and Union of Wills, by which a State may be conceived to be but one Person. So that the most proper Definition of a Civil State, is this. viz. A Civil State is a Compound Moral Person, whose Will [united by those covenants before passed] is the Will of all; to the end it may Use and Apply the strength and riches of Private Persons towards maintaining the Common Peace, Security, and Well-being of all. Which may be conceived as though the whole State was now become but one Man; in which the aforesaid Covenants may be supposed under God's providence to be the Divine *Fiat*, Pronounced by God, let us make man. . . .

[47] I. The Forms of a regular state are three only, which Forms arise from the proper and particular Subject in which the Supream Power Resides. As,

1. A Democracy, which is when the Sovereign Power is Lodged

in a Council consisting of all the Members, and where every member has the Priviledge of a Vote. This Form of Government appears in the greatest part of the World to have been the most Ancient. For that Reason seems to shew it to be the most probable, that when Men [being Originally in a condition of Natural Freedom and Equality] had thoughts of joyning in a Civil Body, would without question be inclined to Administer their common affairs by their common Judgment, and so must necessarily to gratife that Inclination establish a Democracy; neither can it be rationally imagined that Fathers of Families, being yet Free and Independent, should in a moment or little time take off their long delight in governing their own Affairs, & Devolve all upon some single Sovereign Commander; for that it seems to have been thought more Equitable that what belonged to all should be managed by all, when all had entered by Compact into one Community. The Original of our Government, says Plato [speaking of the Athenian Commonwealth], *was taken from the Equality of our Race. Other States there are composed of different Blood, and of unequal Lines, the consequences of which are disproportionable Sovereignty, Tyrannical or Oligarchical Sway; under which men live in such a manner as to Esteem themselves partly Lords, and partly Slaves to each other. But we and our Country-men, being all Born Brethren of the same Mother, do not look upon our selves, to stand under so hard a Relation as that of Lords and Slaves; but the Parity of our Descent inclines us to keep up the like Parity by our Laws, and to yield the precedency to nothing but to Superior Vertue and Wisdom.* And moreover, it seems very manifest that most Civil Communities arose at first from the Union of Families that were nearly allyed in Race and Blood. And though Ancient Story makes frequent mention of Kings, yet it appears that most of them were such that had an influence rather in persuading than in any Power of Commanding. So *Justin* describes that Kind of Government, as the most Primitive which *Aristotle* stiles an Heroical Kingdom. *viz.* Such as is no ways Inconsistent with a Democratical State. *De. princip. Reru.* I.L.1.C.

A democracy is then Erected, when a Number of Free Persons do Assemble together in Order to enter into a Covenant for Uniting themselves in a Body: And such a Preparative Assembly hath some appearance already of a Democracy; it is a Democracy in *Embrio*, properly in this Respect, that every Man hath the Privilege freely to deliver his Opinion concerning the Common Affairs. Yet he who

dissents from the Vote of the Majority is not in the least obliged by what they determine, till by a second Covenant a Popular Form be actually Established; for not before then can we call it a Democratical Government, *viz.* Till the right of determining all matters relating to the publick Safety is actually placed in a General Assembly of the whole People; or by their own Compact and Mutual Agreement, Determine themselves the proper Subject for the Exercise of Sovereign Power. And to compleat this State, and render it capable to Exert its Power to answer the End of a Civil State; These Conditions are necessary.

1. That a certain Time and Place be assigned for Assembling.

2. That when the Assembly be orderly met, as to Time and Place, that then the Vote of the Majority must pass for the Vote of the whole Body.

3. That Magistrates be appointed to Exercise the Authority of the whole for the better dispatch of Business, of every day's Occurrence; who also may with more Mature diligence, search into more Important Affairs; and if in case any thing happens of greater Consequence, may report it to the Assembly; and be peculiarly Serviceable in putting all Publick Decrees into Execution, Because a large Body of People is almost useless in Respect of the last Service, and of many others as to the more Particular Application and Exercise of Power. Therefore it is most agreeable with the Law of Nature, that they Institute their Officers to act in their Name, and Stead.

2. The second Species of Regular Government, is an Aristocracy, and this is said then to be Constituted when the People or Assembly, United by a first Covenant, and having thereby cast themselves into the first rudiments of a State; do then by Common Decree, Devolve the Sovereign Power, on a Council consisting of some Select Members; and these having accepted of the Designation, are then properly invested with Sovereign Command; and then an Aristocracy is formed.

3. The Third Species of a Regular Government, is a Monarchy, which is settled when the Sovereign Power is conferred on some one worthy Person. It differs from the former, because a Monarch, who is but one Person in Natural as well as in Moral Account, & so is furnished with an Immediate Power of Exercising Sovereign Command in all Instances of Government; but the fore named must needs have Particular Time and Place assigned; but the Power and Authority is Equal in each.

2. Mixt Governments, which are various and of divers kinds [not now to be enumerated], yet possibly the fairest in the World is that which has a Regular Monarchy, [in Distinction to what is Despotick] settled upon a Noble Democracy as its Basis. And each part of the Government is so adjusted by Pacts and Laws that renders the whole Constitution an *Elisium*. It is said of the *British* Empire, *That it is such a monarchy as that, by the necessary subordinate Concurrence of the Lords and Commons in the Making and Repealing all Statutes or Acts of Parliament; it hath the main Advantages of an Aristocracy, and of a Democracy, and yet is free from the Disadvantages and Evils of either. It is such a monarchy as, by most admirable temperament affords very much to the Industry, Liberty, and Happiness of the Subject, and reserves enough for the Majesty and Prerogative of any King who will own his People as Subjects, not as Slaves. It is a Kingdom that, of all the Kingdoms of the World, is most like to the Kingdom of Jesus Christ, whose Yoke is easie and Burden light.* [Present state of England, Part I. 64.] Thus having drawn up this brief Scheme concerning Man, and the Nature of Civil Government, he is become sole Subject of, I shall nextly proceed to make Improvements of the Premises to accommodate the main Subject under our Consideration. . . .

[52] I. In General concerning Rebellion against Government for Particular Subjects to break in upon Regular Communities duly Established, is from the premises to Violate the Law of Nature; and is a high Usurpation upon the first great Immunities of Mankind. Such Rebels in States, and Usurpers in Churches affront the World, with a presumption that the Best of the Brotherhood are a Company of Fools, and that themselves have fairly Monopolized all the Reason of Human Nature. Yea, they take upon them the Boldness to assume a Prerogative of trampling under foot the natural original Equality & Liberty of their Fellows; for to push the Proprietors of Settlements out of possession of their old, and impose new schemes upon them, is vertually to declare them in a state of Vassalage, or that they were Born so; and therefore will the Usurper be so gracious as to insure them they shall not be sold at the next Market:)They must esteem it a favour, for by this time all the original prerogatives of man's nature are intentionally a Victim, smoaking to satiate the Usurpers' Ambition. It is a very tart Observation on an *English* Monarch, and where it may by proportion be applied to a Subject must needs sink very deep, and serve

for evidence under this Head. It is in the Secret History of K.C. 2, and K.J. 2, p. 2. Says my author, *Where the Constitution of a Nation is such, that the Laws of the Land are the Measures both of the Sovereign's Commands, and the Obedience of the Subjects, whereby it is Provided; that as the one are not to Invade what by Concessions and Stipulations is granted to the Ruler; so the other is not to deprive them of their lawful and determined Rights and Liberties; then the Prince who strives to subvert the Fundamental Laws of the Society is the Traytor and the Rebel, and not the People, who endeavor to Preserve and Defend their own.* It's very applicable to particular Men in their Rebellions or Usurpations in Church or State.

2. In special I shall now proceed to Enquire, Whether any of the aforesaid Species of regular, unmixed Governments, can with any good shew of Reason be predicable of the Church of Christ on Earth. If the Churches of Christ, as churches, are either the Object or Subject of a Sovereign Power intrusted in the hands of Men, then most certainly one of the fore-cited Schemes of a perfect Government will be applicable to it. . . . .

[64] . . . A Monarchy has been tryed in the Church with a witness, but it has absolutely failed us. An Aristocracy in a deep Calm threw the Democracy Overboard, and took not only the Helm in hand, but seized Ship and Cargo as their Right and Title; but after some time brought all to Ship-wreck, and that in a good Harbour too.

A Democracy was the noble Government which beat out in all the bad Weather of Ten bloody Persecutions under the management of Antiquity. And this is our Constitution, and why can't we be pleased? This Constitution is as agreeable with the Light and Laws of Nature as any other whatsoever, as has been fairly laid down and fully Evinced, and more accommodated to the Concerns of Religion than any other. . . . .

[97] But at present I shall leave it to other men to run the Parallel between our Constitution, and the several Governments I have mentioned, and infer what more they shall think proper; only leaving to myself the liberty to conclude, that the several Examples of Civil States which I have named, do serve abundantly to justify the noble Nature of our Constitution in Church-Order; for that the several famous & august Nations which I have mentioned, [Venice, Holland, and England, ed.] in all their Glory at Home & Success in Arms & Trade Abroad; their several Govern-

ments which have brought them to all this, are either a perfect Democracy, or very much mixed and blendished with it.

Then why should we in *New-England* be any more ashamed, or less careful of our Church-Government, which keeps us from Tyranny and Slavery in the concerns of our Consciences, then those Nations are of their Civil Government, where by they are preserved from the like damnable Circumstances in the Concerns of their outward Life, and Natural Rights and Fortunes? . . .

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CHAPTER II

CONSTITUTIONAL PROTEST AND REVOLUTION

INTRODUCTION

During the century or more preceding the enactment of the series of revenue measures by which Parliament intended to make the Americans pay their share of the cost of empire, the colonists were becoming more and more accustomed to governing themselves. There is a great deal of truth in the generalization that the cause of the Revolution was the laxity with which Britain had governed her American possessions before 1760. A century and a half of self-government was the best kind of preparation for independence, just as it was the worst possible forerunner, from the British point of view, for the administrative and financial measures which began with general search warrants and ended with an army of occupation.

Another important prelude to the struggle between colonies and mother country is the course of reading in political literature which many of the colonists seem to have been taking, even before 1760. The writings of such jurists and political theorists as Bacon, Coke, and Blackstone, Harrington, Sydney, and Locke, Grotius, Puffendorf, Burlamaqui, and Rousseau, were well known to the Americans, and the events which preceded the Revolution furnished them with opportunities to make use of their learning. The political theory produced in America between 1764 and 1776 was remarkable enough under any circumstances; few other periods in the world's history can equal it; but it would have been impossible without some knowledge of the English and Continental literature of the seventeenth and eighteenth centuries. Of course, the Americans did not merely copy the theories of their predecessors. They did, however, find in

the works of these men ideas congenial to their minds and suitable for their purposes. These ideas they did not hesitate to adapt to fit their own needs, nor to continue to adapt them as the nature of the dispute altered.

It is misleading to study the political thought of these years without bearing in mind the rapid change of the political scene and the corresponding stages in the nature of the controversial literature. There are three definite stages in the argument: the first, beginning with the earliest protests and, with a few rare exceptions, lasting until 1774, in which the colonists admitted the general jurisdiction of Parliament over them but denied to that body the right to tax them without their consent; the second, widely adopted in 1774 and relinquished only with the movement for independence in 1776, in which Parliament was denied any power of governing the colonies, although it was freely admitted that allegiance and subordination to the sovereign continued; the third, and final position, the struggle for independence. These steps did not proceed with mathematical precision, but they are so clearly marked off by individual writings and official documents that there can be no doubt of their substantial accuracy as a chart of the movement which culminated in the Declaration of Independence.

The Revenue Act of 1764 and the Stamp Act of 1765 really ushered in the first period, although such writings as Dummer's *Defence of the New England Charters* (1721) indicate that it has beginnings which go far back into colonial history. The first two selections in this chapter are among the examples of the literature written by the colonists against the taxing power of Parliament. With the passage of the Townshend Acts in 1767 and the reorganization of the customs service there followed a slight broadening of the American position. The *Farmer's Letters* show that the transition from the theory of the Stamp Act Congress to that of the Continental Congress is under way. Commercial pressure made the political opposition effective, and, in 1770, the North ministry repealed the unpopular administrative measures

and all of the duties except that on tea. During the next three years there was little open controversy except in Boston, where the struggle between the governor and the assembly furnished the radical leaders with material for keeping up the agitation against British "oppression."

Following the Boston Tea Party of December 16, 1773, an event which would probably not have occurred had it not been for the long and heated controversy between the "Whigs" and "Tories" in that city, came the series of measures known in America as the Coercive Acts. All except one of them had application only to Massachusetts, but, if the intention was to isolate that colony, they were a complete failure. For they demonstrated all too clearly that the power of taxation was by no means the only power of Parliament dangerous to American liberties. At the invitation of the Virginia House of Burgesses committees of correspondence in all of the colonies except Georgia sent delegates to a Congress which met in Philadelphia in September, 1774. In the fourth section of the Resolves of that body is to be found an unqualified acceptance of the principle that the colonies are subject to no measures of Parliament. This doctrine had been advanced as early as 1766 by Franklin, Hawley, and Bland, but it had not been fully developed nor at all widely accepted at that time. It is to be found in a few other writings before 1774, notably in an address of the Massachusetts House of Representatives to the Governor of that colony, March 2, 1773. This paper was written by Samuel Adams, probably at the suggestion of John Adams. However, the first thorough exposition of the principle is in James Wilson's pamphlet which appeared shortly before the meeting of the Congress. Jefferson's *Summary View of the Rights of British America* was written about the same time to urge upon the delegates, especially those from Virginia, the same theory.

Until the development of the argument for what may be called dominion status the Americans had been using English Whig political theories in but slightly changed form. In 1774 they began to break away from the older principles

and to develop doctrines unacceptable to the English Whigs who had thus far supported their contentions. Only a few radicals like Price, Priestly, Cartwright, and Sharp were prepared to go so far. It was to be nearly a century before the extension of self government to Canada marked the acceptance in England of the principle set forth by the Americans in 1774.

Arguments for the independence of the colonies from the jurisdiction of Parliament did not immediately lead to arguments for independence from the jurisdiction of the King. With a few unimportant exceptions, it was not until nearly nine months after the outbreak of hostilities that an open plea for complete independence appeared. The epoch-making pamphlet *Common Sense*, published anonymously, but written by Thomas Paine, appeared in Philadelphia on January 10, 1776. Coming at just the proper time and written in a style which could but stir the emotions of its readers, its effect was extraordinary. Within a few days private letters from people in Philadelphia show a distinct change in sympathy for the movement for independence. Within a few months many editions and several hundred thousand copies were printed and sold. On May 10th the Second Continental Congress, which had been in session for a year, passed a resolution advising the several colonies to establish governments of their own. On May 15th, after long debate, a preamble to this resolution was adopted stating that all authority under the Crown should be suppressed and that the colonies should henceforth carry on governments in their own right. It was now only a matter of a few weeks before the final step was taken in the form of a Declaration of Independence appealing, not to the government of Great Britain, but "to a candid world." With the natural rights philosophy used not to oppose certain tax measures of Parliament, nor even all of the acts of Parliament, but to uphold the claim of independence, the period of resistance and of destructive criticism reaches maturity, and the constructive, constitution making period is ushered in.

JAMES OTIS

THE RIGHTS OF THE BRITISH COLONIES ASSERTED AND PROVED [1]

1764

In April, 1764, Parliament enacted the Sugar Act, first of the tax measures which were to produce a flood of controversial literature in the American colonies. James Otis, a Boston lawyer, already widely known for his speech against the Writs of Assistance, wrote the first pamphlet to gain general circulation and popularity.

Introduction

Of the Origin of Government

[3] The origin of *government* has in all ages no less perplexed the heads of lawyers and politicians, than the origin of *evil* has embarrassed divines and philosophers: and 'tis probable the world may receive a satisfactory solution on *both* those points of enquiry at the *same* time.

The various opinions on the origin of *government* have been reduced to four. 1. That dominion is founded in *Grace*. 2. On *force* or meer *power*. 3. On *compact*. 4. On *property*.

The first of these opinions is so absurd, and the world has paid so very dear for embracing it, especially under the administration of the *Roman pontiffs*, that mankind seem at this day to be in a great measure cured of their madness in this particular; and the notion is pretty generally exploded, and hissed off the stage.

To those who lay the foundation of government in *force* and meer *brutal power*, it is objected; that their system destroys all distinction between right and wrong; that it overturns all morality, and leaves it to every man to do what is right in his own eyes; that it leads directly to *scepticism*, and ends in *atheism*. When a man's will and pleasure is his only rule and guide, what safety can there be either for him or against him, but in the point of a sword?

On the other hand the gentlemen in favour of the *original compact* have been often told that *their* system is chimerical and unsupported by reason or experience. . . .

[1] Boston, New England, Printed: London, Reprinted, for J. Almon, 1764.

[9] With regard to the fourth opinion, that *dominion is founded in property*, what is it but playing with words? Dominion in one sense of the term is synonimous with property, so one cannot be called the foundation of the other, but as one *name* may appear to be the foundation or cause of another.

Property cannot be the foundation of dominion as synonimous with government; for on the supposition that property has a precarious existence antecedent to government, and though it is also admitted that the security of property is one end of government, but that of little estimation even in the view of a *miser* when life and liberty of locomotion and further accumulation are placed in competition it must be a very absurd way of speaking to assert that *one* end of government is the foundation of government. If the ends of government are to be considered as its foundation, it cannot with truth or propriety be said that government is founded on *any* one of those ends; and therefore government is not founded on property or its security *alone*, but at least on something else in conjunction. It is however true in fact and *experience*, as the great, the incomparable *Harrington* has most abundantly demonstrated in his *Oceana*, and other divine writings, that Empire follows the balance of *property:* it is also certain that *property* in fact generally *confers* power, though the possessor of it may not have much more wit than a mole or a musquash: and this is too often the cause, that riches are sought after, without the least concern about the right application of them. But is the fault in the riches, or the general law of nature, or the unworthy possessor? It will never follow from all this, that government is *rightfully* founded on *property*, alone. What shall we say then? Is not government founded on *grace?* No. Nor on *force?* No. Nor on *compact?* Nor *property?* Not altogether on either. Has it *any* solid foundation? any chief corner stone, but what accident, chance or confusion may lay one moment and destroy the next? I think it has an everlasting foundation in the *unchangeable will of* God, the author of nature, whose laws never vary. . . .

Let no man think I am about to commence advocate for *despotism*, because I affirm that government is founded on the necessity of our natures; and that an original supreme Sovereign, absolute, and uncontroulable, *earthly* power *must* exist in and preside over every society; from whose final decisions there can be no appeal but directly to Heaven. It is therefore *originally*

and *ultimately* in the people. I say this supreme absolute power is *originally* and *ultimately* in the people; and they never did in fact freely, nor can they rightfully make an absolute, unlimited renunciation of this divine right.* It is ever in the nature of the thing given in *trust*, and on a condition, the performance of which no mortal can dispence with; namely, that the person or persons on whom the sovereignty is confered by the people, shall *incessantly* consult *their* good. Tyranny of all kinds is to be abhorred, whether it be in the hands of one, or of the few, or of the many.—And though "in the last age a generation of men sprung up that would flatter Princes with an opinion that *they* have a *divine right* to absolute power;" yet "flattery is so vile and miserable an estate of man, and so directly opposite to the generous temper and courage of our nation, that it is hard to be conceived that an Englishman, much less a gentleman, should plead for it." † . . .

Of Colonies in General

[38] A plantation or colony, is a settlement of subjects in a territory *disjointed* or *remote* from the mother country, and may be made by private adventurers or the public; but in both cases the Colonists are intitled to as *ample* rights, liberties and privileges as the subjects of the mother country are, and in some respects *to more*. . . .

Of the Natural Rights of Colonists

[45] . . . . "The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but only to have the law of nature for his rule." This is the liberty of independent states; this is the liberty of every man out of society, and who has a mind to live so; which liberty is only abridged in certain instances, not lost to those who are born in or voluntarily enter into society; this gift of God cannot be annihilated.

The Colonists being men, have a right to be considered as equally entitled to all the rights of nature with the Europeans,

* The power of God Almighty is the only power that can properly and strictly be called supreme and absolute. In the order of nature immediately under him, comes the power of a simple *democracy*, or the power of the whole over the whole. Subsequent to both these, are all other political powers, from that of the French Monarque, to a petty constable.

† Mr. Locke.

and they are not to be restrained, in the exercise of any of these rights, but for the evident good of the whole community.

Of the Political and Civil Rights of the British Colonists

[49] I also lay it down as one of the first principles from whence I intend to deduce the civil rights of the British colonies, that all of them are subject to, and dependent on Great Britain; and that therefore as over subordinate governments, the parliament of Great Britain has an undoubted power and lawful authority, to make acts for the general good, that by naming them, shall and ought to be equally binding, as upon the subjects of Great Britain within the realm. This principle, I presume will be readily granted on the other side of the atlantic. It has been practiced upon for twenty years to my knowledge, in the province of the *Massachusetts-Bay;* and I have ever received it, that it has been so from the beginning, in this and the sister provinces, through the continent. . . .

[52] Every British Subject born on the continent of America, or in any other of the British dominions, is by the law of God and nature, by the common law, and by act of parliament, (exclusive of all charters from the crown) entitled to all the natural, essential, inherent and inseparable rights of our fellow subjects in Great Britain. Among those rights are the following, which it is humbly conceived no man or body of men, not excepting the parliament, justly, equitably and consistently with their own rights and the constitution, can take away.

1st. *That the supreme and subordinate powers of legislation should be free and sacred in the hands where the community have once rightfully placed them.*

2dly. *The supreme national legislative cannot be altered justly till the commonwealth is dissolved, nor a subordinate legislative taken away without forfeiture or other good cause.* Nor then can the subjects in the subordinate government be reduced to a state of slavery, and subject to the despotic rule of others. A state has no right to make slaves of the conquered. Even when the subordinate right of legislature is forfeited, and so declared, this cannot effect the natural persons either of those who were invested with it, or the inhabitants, so far as to deprive them of the rights of subjects and of men.—The colonists will have an equitable right, notwithstanding any such forfeiture of charter, to be

represented in parliament, or to have some new subordinate legislature among themselves. It would be best if they had both. Deprived, however, of their common rights as subjects, they cannot lawfully be, while they remain such. A representation in Parliament from the several colonies, since they are become so large and numerous, as to be called on not only to maintain provincial government, civil and military, among themselves, for this they have cheerfully done, but to contribute towards the support of a national standing army, by reason of the heavy national debt, when they themselves owe a large one, contracted in the common cause, cannot be thought an unreasonable thing, nor if asked, could it be called an immoderate request. . . .

No representation of the colonists in parliament alone, would, however, be equivalent to a subordinate legislative among themselves; nor as well answer the ends of increasing their prosperity and the commerce of Great Britain. It would be impossible for the parliament to judge so well of their abilities to bear taxes, impositions on trade, and other duties and burthens, or of the local laws that might be really needful, as a legislative here.

3rdly. *No legislative, supreme or subordinate, has a right to make itself arbitrary.*

It would be a most manifest contradiction, for a free legislative, like that of Great Britain, to make itself arbitrary.

4thly. *The supreme legislative cannot justly assume a power of ruling by extempore arbitrary decrees, but is bound to dispense justice by known settled rules, and by duly authorized independent judges.*

5thly. *The supreme power cannot take from any man any part of his property*, without his consent in *person or by representation.*

6thly. *The legislative cannot transfer the power of making laws to any other hands.*

These are their bounds, which by God and nature are fixed, hitherto have they a right to come, and no further.

1. *To govern by stated laws.*

2. *Those laws should have no other end ultimately, but the good of the people.*

3. *Taxes are not to be laid on the people, but by their consent in person, or by deputation.*

4. *Their whole power is not transferable.**

These are the first principles of law and justice, and the great

* See Locke on Government. B. H. C. XI.

barriers of a free state, and of the British constitution in particular. I ask, I want no more—Now let it be shewn how it is reconcileable with these principles, or to many other fundamental maxims of the British constitution, as well as the natural and civil rights, which by the law of their country, all British subjects are entitled to, as their best inheritance and birth-right, that all the northern colonies, who are without one representative in the house of Commons, should be taxed by the British parliament. . . .

[57] Is there the least difference, as to the consent of the Colonists, whether taxes and impositions are laid on their trade, and other property, by the crown alone, or by the parliament? As it is agreed on all hands, the Crown alone cannot impose them, we should be justifiable in refusing to pay them, but must and ought to yield obedience to an act of parliament, though erroneous, till repealed.

I can see no reason to doubt, but that the imposition of taxes, whether on trade or on land, or houses, or ships, on real or personal, fixed or floating property, in the colonies, is absolutely irreconcileable with the rights of the Colonists, as British subjects, and as men. . . .

. . . . The power of parliament is uncontroulable, but by themselves, and we must obey. They only can repeal their own acts. There would be an end of all government, if one or a number of subjects or subordinate provinces should take upon them so far to judge of the justice of an act of parliament, as to refuse obedience to it. If there was nothing else to restrain such a step, prudence ought to do it, for forcibly resisting the parliament and the King's laws, is high treason. Therefore let the parliament lay what burdens they please on us, we must, it is our duty to submit and patiently bear them, till they will be pleased to relieve us. And it is to be presumed, the wisdom and justice of that august assembly, always will afford us relief by repealing such acts, as through mistake, or other human infirmities, have been suffered to pass, if they can be convinced that their proceedings are not constitutional, or not for the common good.

The parliament may be deceived, they may have been misinformed of facts, and the colonies may in many respects be misrepresented to the King, his parliament, and his ministry. In some instances, I am well assured the colonies have been very strangely misrepresented in England. . . .

[70] To say the parliament is absolute and arbitrary, is a contradiction. The parliament cannot make 2 and 2, 5: Omnipotency cannot do it. The supreme power in a state, is *jus dicere* only:—*jus dare*, strictly speaking, belongs alone to God. Parliaments are in all cases to *declare* what is for the good of the whole; but it is not the *declaration* of parliament that makes it so: There must be in every instance, a higher authority, *viz.* God. Should an act of parliament be against any of *his* natural laws, which are *immutably* true, *their* declaration would be contrary to eternal truth, equity and justice, and consequently void: and so it would be adjudged by the parliament itself, when convinced of their mistake. Upon this great principle, parliaments repeal such act, as soon as they find they have been mistaken in having declared them to be for the public good, when in fact they were not so. When such mistake is evident and palpable, as in the instances in the appendix, the judges of the executive courts have declared the act "of a whole parliament void." See here the grandeur of the British constitution! See the wisdom of our ancestors! The supreme *legislative*, and the supreme *executive*, are a perpetual check and balance to each other. If the supreme executive errs, it is informed by the supreme legislative in parliament: if the supreme legislative errs, it is informed by the supreme executive in the King's courts of law. Here, the King appears, as represented by his judges, in the highest lustre and majesty, as supreme executor of the commonwealth; and he never shines brighter, but on his throne, at the head of the supreme legislative. This is government! This, is a constitution! to preserve which, either from foreign or domestic foes, has cost oceans of blood and treasure in every age; and the blood and the treasure have upon the whole been well spent. . . .

[77] We all think ourselves happy under Great Britain. We love, esteem and reverence our mother country, and adore our King. And could the choice of independency be offered the colonies, or subjection to Great Britain upon any terms above absolute slavery, I am convinced they would accept the latter. The ministry, in all future generations, may rely on it, that British America will never prove unduitiful, till driven to it, as the last fatal resort against ministerial oppression, which will make the wisest mad, and the weakest strong. . . .

[91] . . . . But if it was thought hard that charter privileges should be taken away by act of parliament, is it not much harder

to be in part, or in whole, disfranchised of rights, that have been always thought inherent to a British subject, namely, to be free from all taxes, but what he consents to in person, or by his representative? This right, if it could be traced no higher than Magna Charta, is part of the common law, part of a British subjects birthright, and as inherent and perpetual, as the duty of allegiance; both which have been brought to these colonies, and have been hitherto held sacred and inviolable, and I hope and trust ever will. It is humbly conceived, that the British colonists (except only the conquered, if any) are, by Magna Charta, as well entitled to have a voice in their taxes, as the subjects within the realm. Are we not as really deprived of that right, by the parliament assessing us before we are represented in the house of commons, as if the King should do it by his prerogative? Can it be said with any colour of truth or justice, that we are represented in parliament? . . .

[98] The sum of my argument is, That civil government is of God: that the administrators of it were originally the whole people: that they might have devolved it on whom they pleased: that this devolution is fiduciary, for the good of the whole: that by the British constitution, this devolution is on the King, lords and commons, the supreme, sacred and uncontroulable legislative power, not only in the realm, but through the dominions: that by the abdication, the original compact was broken to pieces: that by the revolution, it was renewed, and more firmly established, and the rights and liberties of the subject in all parts of the dominions, more fully explained and confirmed: that in consequence of this establishment and the acts of succession and union, his Majesty GEORGE III is rightful king and sovereign, and with his parliament, the supreme legislative of Great-Britain, France and Ireland, and dominions thereunto belonging: that this constitution is the most free one, and by far the best, now existing on earth: that by this constitution, every man in the dominions is a free man: that no parts of his Majesty's dominions can be taxed without their consent: that every part has a right to be represented in the supreme or some subordinate legislature: that the refusal of this, would seem to be a contradiction in practice to the theory of the constitution: that the colonies are subordinate dominions, and are now in such a state, as to make it best for the good of the whole, that they should not only be continued in the enjoyment of subordinate legislation, but be also represented in some proportion to their

number and estates in the grand legislation of the nation: that this would firmly unite all parts of the British empire, in the greatest peace and prosperity: and render it invulnerable and perpetual.

JOHN ADAMS

A DISSERTATION ON THE CANON AND FEUDAL LAW [1]

1765

This brief tract was originally printed in four numbers of the Boston *Gazette* in August, 1765; it was later reprinted in England as well as in America. While the occasion for its preparation was the opposition to the Stamp Act, its peculiar title and some of its arguments are better understood after reading the notations in Adams's Diary concerning his contemporary law studies (*Works*, vol. II, pp. 148 ff.). It is especially important as indicating the early development of many of the theories which were to be used in one form or another during the next eleven years, and much of the doctrine relied upon by John Adams during a very long life of political writing.

[448] "Ignorance and inconsideration are the two great causes of the ruin of mankind." This is an observation of Dr. Tillotson, with relation to the interest of his fellow men in a future and immortal state. But it is of equal truth and importance if applied to the happiness of men in society, on this side the grave. In the earliest ages of the world, absolute monarchy seems to have been the universal form of government. Kings, and a few of their great counsellors and captains, exercised a cruel tyranny over the people, who held a rank in the scale of intelligence, in those days, but little higher than the camels and elephants that carried them and their engines to war. . . .

The poor people . . . have seldom found either leisure or opportunity to form a union and exert their strength; ignorant as they were of arts and letters, they have seldom been able to frame and support a regular opposition. This, however, has been known by the great to be the temper of mankind; and they have accordingly labored, in all ages, to wrest from the populace, as they are con-

[1] *Works of John Adams*, edited by C. F. Adams. Boston: Little and Brown. 1851. Vol. III.

temptuously called, the knowledge of their rights and wrongs, and the power to assert the former or redress the latter. I say RIGHTS, for such they have, undoubtedly antecedent to all earthly government,—*Rights*, that cannot be repealed or restrained by human laws—*Rights*, derived from the great Legislator of the universe.

Since the promulgation of Christianity, the two greatest systems of tyranny that have sprung from this original, are the canon and the feudal law. The desire of dominion, that great principle by which we have attempted to account for so much good and so much evil, is, when properly restrained, a very useful and noble movement in the human mind. But when such restraints are taken off, it becomes an encroaching, grasping, restless, and ungovernable power. Numberless have been the systems of iniquity contrived by the great for the gratification of this passion in themselves; but in none of them were they ever more successful than in the invention and establishment of the canon and the feudal law. . . .

[450] But another event still more calamitous to human liberty, was a wicked confederacy between the two systems of tyranny above described. It seems to have been even stipulated between them, that the temporal grandees should contribute every thing in their power to maintain the ascendency of the priesthood, and that the spiritual grandees in their turn, should employ their ascendency over the consciences of the people, in impressing on their minds a blind, implicit obedience to civil magistry.

Thus, as long as this confederacy lasted, and the people were held in ignorance, liberty, and with her, knowledge and virtue too, seem to have deserted the earth, and one age of darkness succeeded another, till God in his benign providence raised up the champions who began and conducted the Reformation. From the time of the Reformation to the first settlement of America, knowledge gradually spread in Europe, but especially in England; and in proportion as that increased and spread among the people, ecclesiastical and civil tyranny, which I use as synonymous expressions for the canon and feudal laws, seem to have lost their strength and weight. The people grew more and more sensible of the wrong that was done them by these systems, more and more impatient under it, and determined at all hazards to rid themselves of it; till at last, under the execrable race of the Stuarts, the struggle between the

people and the confederacy aforesaid of temporal and spiritual tyranny, became formidable, violent, and bloody.

It was this great struggle that peopled America. It was not religion alone, as is commonly supposed; but it was a love of universal liberty, and a hatred, a dread, a horror, of the infernal confederacy before described, that projected, conducted, and accomplished the settlement of America. . . .

After their arrival here, they began their settlement, and formed their plan, both of ecclesiastical and civil government, in direct opposition to the canon and the feudal systems. The leading men among them, both of the clergy and the laity, were men of sense and learning. To many of them the historians, orators, poets, and philosophers of Greece and Rome were quite familiar; and some of them have left libraries that are still in being, consisting chiefly of volumes in which the wisdom of the most enlightened ages and nations is deposited,—written, however, in languages which their great-grandsons, though educated in European universities, can scarcely read.

[452] . . . . Whatever imperfections may be justly ascribed to them, which, however, are as few as any mortals have discovered, their judgment in framing their policy was founded in wise, humane, and benevolent principles. It was founded in revelation and in reason too. It was consistent with the principles of the best and greatest and wisest legislators of antiquity. Tyranny in every form, shape, and appearance was their disdain and abhorrence; no fear of punishment nor even of death itself in exquisite tortures, had been sufficient to conquer that steady, manly, pertinacious spirit with which they had opposed the tyrants of those days in church and state. They were very far from being enemies to monarchy; and they knew as well as any men, the just regard and honor that is due to the character of a dispenser of the mysteries of the gospel of grace. But they saw clearly, that popular powers must be placed as a guard, a control, a balance, to the powers of the monarch and the priest, in every government, or else it would soon become the man of sin, the whore of Babylon, the mystery of iniquity, a great and detestable system of fraud, violence, and usurpation. Their greatest concern seems to have been to establish a government of the church more consistent with the Scriptures, and a government of the state more agreeable to the dignity of human nature, than any they had seen

in Europe, and to transmit such a government down to their posterity, with the means of securing and preserving it forever. To render the popular power in their new government as great and wise as their principles of theory, that is, as human nature and the Christian religion require it should be, they endeavored to remove from it as many of the feudal inequalities and dependencies as could be spared, consistently with the preservation of a mild limited monarchy . . . they demolished the whole system of diocesan episcopacy; and, deriding, as all reasonable and impartial men must do, the ridiculous fancies of sanctified effluvia from episcopal fingers, they established sacredotal ordination on the foundation of the Bible and common sense. . . . They knew that government was a plain, simple, intelligible thing, founded in nature and reason, and quite comprehensible by common sense. They detested all the base services and servile dependencies of the feudal system. They knew that no such unworthy dependencies took place in the ancient seats of liberty, the republics of Greece and Rome; and they thought all such slavish subordinations were equally inconsistent with the constitution of human nature and that religious liberty with which Jesus had made them free. . . . Many celebrated modern writers in Europe have espoused the same sentiments. . . . Rousseau, speaking of the same system, calls it,—"That most iniquitous and absurd form of government by which human nature was so shamefully degraded." . . .

[455] They were convinced, by their knowledge of human nature, derived from history and their own experience, that nothing could preserve their posterity from the encroachments of the two systems of tyranny, in opposition to which, as has been observed already, they erected their government in church and state, but knowledge diffused generally through the whole body of the people. Their civil and religious principles, therefore, conspired to prompt them to use every measure and take every precaution in their power to propagate and perpetuate knowledge. For this purpose they laid very early the foundations of colleges, and invested them with ample privileges and emoluments. . . . They made an early provision by law, that every town consisting of so many families should be always furnished with a grammar school. . . .

The consequences of these establishments we see and feel every

day. A native of America who cannot read and write is as rare an appearance as a Jacobite or a Roman Catholic, that is, as rare as a comet or an earthquake. It has been observed, that we are all of us lawyers, divines, politicians, and philosophers. . . . Be it remembered, however, that liberty must at all hazards be supported. We have a right to it, derived from our Maker. But if we had not, our fathers have earned and bought it for us, at the expense of their ease, their estates, their pleasure, and their blood. And liberty cannot be preserved without a general knowledge among the people, who have a right, from the frame of their nature, to knowledge, as their great Creator, who does nothing in vain, had given them understanding, and a desire to know; but besides this, they have a right, an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge, I mean, of the characters and conduct of their rulers. Rulers are no more than attorneys, agents, and trustees, for the people; and if the cause, the interest and trust, is insidiously betrayed, or wantonly trifled away, the people have a right to revoke the authority that they themselves have deputed, and to constitute abler and better agents, attorneys, and trustees. And the preservation of the means of knowledge among the lowest ranks, is of more importance to the public than all the property of all the rich men in the country. . . . But none of the means of information are more sacred, or have been cherished with more tenderness and care by the settlers of America, than the press. Care has been taken that the art of printing should be encouraged, and that it should be easy and cheap and safe for any person to communicate his thoughts to the public. . . .

[458] . . . . Believe me, my countrymen, they have imbibed an opinion on the other side the water, that we are an ignorant, a timid, and a stupid people; nay, their tools on this side have often the impudence to dispute your bravery. But I hope in God the time is near at hand when they will be fully convinced of your understanding, integrity, and courage. . . .

The true source of our sufferings has been our timidity.

We have been afraid to think. We have felt a reluctance to examining into the grounds of our privileges, and the extent in which we have an indisputable right to demand them, against all the power and authority on earth. And many who have not scrupled to examine for themselves, have yet for certain prudent

reasons been cautious and diffident of declaring the result of their inquiries.

[460] . . . . We have been told that "the word *rights* is an offensive expression;" "that the king, his ministry, and parliament, will not endure to hear Americans talk of their *rights;*" "that Britain is the mother and we the children, that a filial duty and submission is due from us to her," and that "we ought to doubt our own judgment, and presume that she is right, even when she seems to us to shake the foundations of government;" that "Britain is immensely rich and great and powerful, has fleets and armies at her command which have been the dread and terror of the universe, and that she will force her own judgment into execution, right or wrong." But let me entreat you, sir, to pause. Do you consider yourself as a missionary of loyalty or of rebellion? Are you not representing your king, his ministry, and parliament, as tyrants,—imperious, unrelenting tyrants,—by such reasoning as this? Is not this representing your most gracious sovereign as endeavoring to destroy the foundations of his own throne? Are you not representing every member of parliament as renouncing the transactions at Runing Mede, (the meadow, near Windsor, where Magna Charta was signed;) and as repealing in effect the bill of rights, when the Lords and Commons asserted and vindicated the rights of the people and their own rights, and insisted on the king's assent to that assertion and vindication? Do you not represent them as forgetting that the prince of Orange was created King William, by the people, on purpose that their rights might be eternal and inviolable? Is there not something extremely fallacious in the common-place images of mother country and children colonies? Are we the children of Great Britain any more than the cities of London, Exeter, and Bath? Are we not brethren and fellow subjects with those in Britain, only under a somewhat different method of legislation, and a totally different method of taxation? But admitting we are children, have not children a right to complain when their parents are attempting to break their limbs, to administer poison, or to sell them to enemies for slaves? . . . .

Let us banish for ever from our minds, my countrymen, all such unworthy ideas of the king, his ministry, and parliament. Let us not suppose that all are become luxurious, effeminate, and unreasonable, on the other side the water, as many designing persons would insinuate. Let us presume, what is in fact true, that the

spirit of liberty is as ardent as ever among the body of the nation, though a few individuals may be corrupted. . . .

[462] This spirit, however, without knowledge, would be little better than brutal rage. Let us tenderly and kindly cherish, therefore, the means of knowledge. Let us dare to read, think, speak, and write. Let every order and degree among the people rouse their attention and animate their resolution. Let them all become attentive to the grounds and principles of government, ecclesiastical and civil. Let us study the law of nature; search into the spirit of the British constitution, read the histories of ancient ages; contemplate the great example of Greece and Rome; set before us the conduct of our own British ancestors, who have defended for us the inherent rights of mankind against foreign and domestic tyrants and usurpers, against arbitrary kings and cruel priests, in short, against the gates of earth and hell. . . .

. . . . Let it be known, that British liberties are not the grants of princes or parliaments, but original rights, conditions of original contracts, coequal with prerogative, and coeval with government; that many of our rights are inherent and essential, greed on as maxims, and established as preliminaries, even before a parliament existed. Let them search for the foundations of British laws and government in the frame of human nature, in the constitution of the intellectual and moral world. There let us see that truth, liberty, justice, and benevolence, are its everlasting basis; and if these could be removed, the superstructure is overthrown of course. . . .

[464] . . . . There seems to be a direct and formal design on foot, to enslave all America. This, however, must be done by degrees. The first step that is intended, seems to be an entire subversion of the whole system of our fathers, by the introduction of the canon and feudal law into America. The canon and feudal systems, though greatly mutilated in England, are not yet destroyed. Like the temples and palaces in which the great contrivers of them once worshipped and inhabited, they exist in ruins; and much of the domineering spirit of them still remains . . . it seems very manifest from the Stamp Act itself, that a design is formed to strip us in a great measure of the means of knowledge, by loading the press, the colleges, and even an almanack and a newspaper, with restraints and duties; and to introduce the inequalities and dependencies of the feudal system, by taking from

the poorer sort of people all their little subsistence, and conferring it on a set of stamp officers, distributors, and their deputies. . . . No one of any feeling, born and educated in this once happy country, can consider the numerous distresses, the gross indignities, the barbarous ignorance, the haughty usurpation, that we have reason to fear are meditating for ourselves, our children, our neighbors, in short, for all our countrymen and all their posterity, without the utmost agonies of heart and many tears.

JOHN DICKINSON

LETTERS FROM A FARMER IN PENNSYLVANIA TO THE INHABITANTS OF THE BRITISH COLONIES [1]

1767–68

No essays written in the colonies before 1776 equalled the *Farmer's Letters* in popularity. Published in a Philadelphia newspaper, they were reprinted in twenty-five other newspapers, and, within a month of the appearance of the last essay, they were collected and published as a pamphlet, of which eight or more editions were printed in the colonies, two in England, one in Ireland, and one in France. Their author was a country gentleman who had studied law in England and practised in Philadelphia. The *Letters* are only one of the many important political writings which he produced in the forty years after 1764.

Letter I

With a good deal of surprize I have observed, that little notice has been taken of an act of parliament, as injurious in its principle to the liberties of these colonies, as the *Stamp-Act* was: I mean the act for suspending the legislation of *New-York*.

The assembly of that government complied with a former act of parliament, requiring certain provisions to be made for the troops in *America*, in every particular, I think, except the articles of salt, pepper, and vinegar. In my opinion they acted imprudently, considering all circumstances, in not complying so far, as would have given satisfaction, as several colonies did: but my dislike of

[1] *Memoirs of the Historical Society of Pennsylvania*, vol. XIV, edited by P. L. Ford. Philadelphia: 1895.

their conduct in that instance, has not blinded me so much, that I cannot plainly perceive, that they have been punished in a manner pernicious to American freedom, and justly alarming to all the colonies.

If the *British* Parliament has a legal authority to issue an order, that we shall furnish a single article for the troops here, and to compel obedience to *that* order; they have the same right to order us to supply those troops with arms, clothes, and every necessary, and to compel obedience to *that* order also; in short, to lay *any burdens* they please upon us. What is this but *taxing* us at a *certain sum*, and leaving to us only the *manner* of raising it? How is this mode more tolerable than the *Stamp-act?* Would that act have appeared more pleasing to *Americans*, if being ordered thereby to raise the sum total of the taxes, the mighty privilege had been left to them, of saying how much should be paid for an instrument of writing on paper, and how much for another on parchment?

An act of parliament commanding us to do a certain thing, if it has any validity, is a *tax* upon us for the expence that accrues in complying with it, and for this reason, I believe, every colony on the continent, that chose to give a mark of their respect for *Great-Britain*, in complying with the act relating to the troops, cautiously avoided the mention of that act, lest their conduct should be attributed to its supposed obligation.

The matter being thus stated, the assembly of *New-York* either had, or had not a right to refuse submission to that act. If they had, and I imagine no *American* will say, they had not, then the parliament had *no right* to compel them to execute it.—If they had not *that right*, they had *no right* to punish them for not executing it; and therefore had *no right* to suspend their legislation, which is a punishment. In fact, if the people of *New-York* cannot be legally taxed by their own representatives, they cannot be legally deprived of the privileges of making laws, only for insisting on that exclusive privilege of taxation. If they may be legally deprived in such a case of the privilege of making laws, why may they not, with equal reason, be deprived of every other privilege? Or why may not every colony be treated in the same manner, when any of them shall dare to deny their assent to any impositions that shall be directed? Or what signifies the repeal of the *Stamp-act*, if these colonies are to lose their *other* privileges, by not tamely surrendering *that* of *taxation?* . . .

Letter II

There is another late act of parliament, which seems to me to be as destructive to the liberty of these colonies, as that inserted in my last letter; that is, the act for granting the duties on paper, glass, &c. It appears to me to be unconstitutional.

The parliament unquestionably possesses a legal authority to *regulate* the trade of *Great-Britain*, and all its colonies. Such an authority is essential to the relation between a mother country and its colonies; and necessary for the common good of all. He, who considers these provinces as states distinct from the *British Empire*, has very slender notions of *justice* or of *their interests*. We are but parts of *a whole;* and therefore there must exist a power somewhere, to preside, and to preserve the connection in due order. This power is lodged in the parliament; and we are as much dependant on *Great-Britain*, as a perfectly free people can be on another.

I have looked over *every statute* relating to these colonies, from their first settlement to this time; and I find every one of them founded on this principle, till the *Stamp-act* administration.[1] *All before* are calculated to preserve or promote a mutually beneficial intercourse between the several constituent parts of the empire; and though many of them imposed duties on trade, yet those duties were always imposed *with design* to restrain the commerce of one part, that was injurious to another, and thus to promote the general welfare. The raising a revenue thereby was never intended. Thus, the king by his judges in his courts of justice, imposes fines, which all together amount to a considerable sum, and contribute to the support of government; but this is merely a consequence arising from restrictions, which only meant to keep peace, and prevent confusion; and surely a man would argue very loosely, who should conclude from hence, that the King has a right to levy money in general upon his subjects; Never did the *British parliament*, till the period above mentioned, think of imposing duties in America FOR THE PURPOSE OF RAISING A REVENUE. Mr. Grenville first introduced this language, in the preamble to the 4th of *Geo.* III. Ch. 15, which has these words—"And whereas it is just and necessary that a REVENUE BE RAISED IN YOUR MAJESTY'S SAID DOMINIONS IN

[1] [Here Dickinson gives a lengthy citation of previous statutes in support of his position.]

AMERICA, *for defraying the expences of defending, protecting and securing the same:* We your Majesty's most dutiful and loyal subjects, THE COMMONS OF GREAT BRITAIN, in parliament assembled, being desirous to make some provision in the present session of parliament, towards raising the said revenue in America, have resolved to give and grant unto your Majesty the several rates and duties herein after mentioned," &c.

A few months after came the *Stamp-act*, which reciting this, proceeds in the same strange mode of expression, thus—"And whereas it is just and necessary, that provision be made FOR RAISING A FURTHER REVENUE WITHIN YOUR MAJESTY'S DOMINIONS IN AMERICA, towards defraying the said expences, we your Majesty's most dutiful and loyal subjects, the COMMONS OF GREAT-BRITAIN, &c. GIVE and GRANT," &c. as before.

The last act, granting duties upon paper, &c. carefully pursues these modern precedents. The preamble is, "Whereas it is expedient that a REVENUE SHOULD BE RAISED IN YOUR MAJESTY'S DOMINIONS IN AMERICA, *for making a more certain and adequate provision for the defraying the charge of the administration of justice, and the support of civil government in such provinces, where it shall be found necessary;* and *towards the further defraying the expences of defending, protecting and securing the said dominions*, we your Majesty's most dutiful and loyal subjects, the COMMONS OF GREAT-BRITAIN, &c. GIVE AND GRANT," &c. as before.

Here we may observe an authority *expressly* claimed to impose duties on these colonies; not for the regulation of trade; not for the preservation or promotion of a mutually beneficial intercourse between the several constituent parts of the empire, heretofore the *sole objects* of parliamentary institutions; *but for the single purpose of levying money upon us.*

This I call an innovation; and a most dangerous innovation. It may perhaps be objected, that *Great-Britain* has a right to lay what duties she pleases upon her exports, and it makes no difference to us, whether they are paid here or there.

To this I answer. These colonies require many things for their use, which the laws of *Great-Britain* prohibit them from getting any where but from her. Such are paper and glass.

That we may be legally bound to pay any *general* duties on these commodities, relative to the regulation of trade, is granted; but we being *obliged by the laws* to take them from Great Britain, any

special duties imposed on their exportation *to us only, with intention to raise a revenue from us only*, are as much *taxes* upon us, as those imposed by the *Stamp-act.*

What is the difference in *substance* and *right*, whether the same sum is raised upon us by the rates mentioned in the Stamp-act, on the *use* of the paper, or by these duties, on the *importation* of it. It is nothing but the edition of a former book, with a new title page. . . .

Great-Britain has prohibited the manufacturing *iron* and *steel* in these colonies, without any objection being made to her *right* of doing it. The *like* right she must have to prohibit any other manufacture among us. Thus she is possessed of an undisputed *precedent* on that point. This authority, she will say, is founded on the *original intention* of settling these colonies; that is, that she should manufacture for them, and that they should supply her with materials. The *equity* of this policy, she will also say, has been universally acknowledged by the colonies, who never have made the least objection to statutes for that purpose; and will further appear by the *mutual benefits* flowing from this usage, ever since the settlement of these colonies.

Our great advocate, Mr. *Pitt*, in his speeches on the debate concerning the repeal of the *Stamp-act*, acknowledged, that *Great-Britain* could restrain our manufactures. His words are these—"This kingdom, as the supreme governing and legislative power, has ALWAYS bound the colonies by her regulations and RESTRICTIONS in trade, in navigation, in MANUFACTURES—in every thing, *except that of taking their money out of their pockets*, WITHOUT THEIR CONSENT." Again he says, "We may bind their trade, CONFINE THEIR MANUFACTURES, and exercise every power whatever, *except that of taking money out of their pockets*, WITHOUT THEIR CONSENT."

Here then, let my countrymen ROUSE yourselves, and behold the ruin hanging over their heads. If they ONCE admit, that Great-Britain may lay duties upon her exportations to us, *for the purpose of levying money on us only*, she then will have nothing to do, but to lay those duties on the articles which she prohibits us to manufacture—and the tragedy of *American* liberty is finished. . . .

Letter III

. . . . Therefore it becomes necessary to enquire, whether "our rights *are* invaded." To talk of "defending" them, as if they could be no otherwise "defended" than by arms, is as much out of the way, as if a man having a choice of several roads to reach his journey's end, should prefer the worst, for no other reason, than because it is the worst. . . . .

The cause of *liberty* is a cause of too much dignity, to be sullied by turbulence and tumult. It ought to be maintained in a manner suitable to her nature. Those who engage in it, should breathe a sedate, yet fervent spirit, animating them to actions of prudence, justice, modesty, bravery, humanity, and magnanimity. . . .

I hope, my dear countrymen, that you will in every colony be upon your guard against those who may at any time endeavour to stir you up, under pretences of patriotism, to any measures disrespectful to our sovereign and our mother country. Hot, rash, disorderly proceedings, injure the reputation of a people as to wisdom, valour and virtue, without procuring them the least benefit. I pray GOD, that he may be pleased to inspire you and your posterity to the latest ages with that spirit, of which I have an idea, but find a difficulty to express: to express in the best manner I can, I mean a spirit that shall so guide you, that it will be impossible to determine, whether an *American's* character is most distinguishable for his loyalty to his sovereign, his duty to his mother country, his love of freedom, or his affection for his native soil. . . .

In truth,—the prosperity of these provinces is founded in their dependance on *Great-Britain;* and when she returns to "her old good humour, and old good nature," as Lord *Clarendon* expresses it, I hope they will always esteem it their duty and interest, as it most certainly will be, to promote her welfare by all the means in their power. . . .

The constitutional modes of obtaining relief, are those which I would wish to see pursued on the present occasion, that is, by petitioning of our assemblies, or, where they are not permitted to meet, of the people to the powers that can afford us relief. . . .

Letter IV

An objection, I hear, has been made against what I offer in my second letter, which I would willingly clear up before I proceed. "There is," say these objectors "a material difference between the *Stamp-act* and the *late act* for laying a duty on paper, &c. that justifies the conduct of those who opposed the former and yet are willing to submit to the latter. The duties imposed by the *Stamp-Act*, were *internal* taxes, but the present are *external*, which therefore the parliament may have a right to impose."—To this I answer, with a total denial of the power of parliament to lay upon these colonies any "tax" whatever.

This point being so important to this and to succeeding generations, I wish to be clearly understood.

To the word "*Tax*," I annex that meaning which the constitution and history of *England* require to be annexed to it; that it is, *an imposition on the subject for the sole purpose of levying money.*

In the early ages of our monarchy, certain services rendered to the crown, *for the general good*, were personal;[1] but in process of time, such institutions being found inconvenient, certain *gifts* and *grants* of their own property were made by the people, under the several names of aids, tallages, talks, taxes, subsidies, &c. These were made as may be collected even from the names, *for public service* "upon need and necessity." All these sums were levied upon the people by virtue of their voluntary gift. The design of them was to support the *national honour and interest.* Some of those grants comprehended duties arising from trade, being imports on merchandizes. These Chief Justice *Coke* classes under "subsidies" and "parliamentary aids." They are also called "customs." But whatever the name was, they were always considered as *gifts of the people to the crown, to be employed for public uses.*

Commerce was at a low ebb, and most surprising instances may be produced, how little it was attended to, for a succession of ages. The terms that have been mentioned, and among the rest that of "*tax*," had obtained a national, parliamentary meaning, drawn from the principles of the constitution, long before any English man thought of regulations of trade "by imposing duties."

[1] [Here follow a number of lengthy foot notes, based mainly upon Coke's *Institutes* and dealing with certain aspects of the development of the law and principles of taxation.]

Whenever we speak of "taxes" among *Englishmen*, let us therefore speak of them with reference to the *intentions* with which, and the principles on which they have been established. This will give certainty to our expression, and safety to our conduct: But if when we have in view the liberty of these colonies, and the influence of "taxes" laid without our consent, we proceed in any other course, we pursue a *Juno* indeed, but shall only catch a cloud.

In the national parliamentary sense insisted on, the word "tax" was certainly understood by the congress at *New-York*, whose resolves may be said to form the *American* "bill of rights." I am satisfied that the congress was of opinion, that no impositions could be legally laid on the people of these colonies for the purpose of levying money, but by themselves or their representatives.

[He then quotes the third, fourth, fifth, and sixth resolutions of the Stamp Act Congress.]

Here is no distinction made, between *internal* and *external* taxes. It is evident from the short reasoning thrown into these resolves that every imposition "to grant to his Majesty *the property of the colonies*," was thought a "tax," and that every such imposition if laid any other way "but with their consent, given personally, or by their representatives;" was not only "unreasonable, and inconsistent with the principles and spirit of the *British* constitution," but destructive "to the freedom of a people." . . .

Letter XII

Let these *truths* be indelibly impressed on our minds—*that we cannot be* HAPPY *without being* FREE—that we cannot be free *without being secure in our property*—that *we* cannot be secure in our property, *if, without our consent, others may, as by right, take it away*—that *taxes imposed on us by parliament*, do thus take it away—that *duties laid for the sole purposes of raising money*, are taxes—that *attempts* to lay such duties *should be instantly and firmly opposed*—that this opposition can never be effectual, *unless it is the united effort of these provinces*—that, therefore, BENEVOLENCE *of temper toward each other*, and UNANIMITY *of counsils* are essential to the welfare of the whole—and lastly, that, for this reason, every man amongst us, who, in any manner, would encourage either *dissention, diffidence*, or *indifference* between these colonies, is an enemy to *himself* and to his country. . . .

JAMES WILSON

CONSIDERATIONS ON THE NATURE AND EXTENT OF THE LEGISLATIVE AUTHORITY OF THE BRITISH PARLIAMENT [1]

1774

James Wilson was a Scotsman, a graduate of the University of Edinburgh, and an attorney in Philadelphia. He had read law with John Dickinson and, like Dickinson, was to have a long and distinguished career in American politics and law. This pamphlet presents the clearest and most closely reasoned argument in favor of the principle which was subsequently adopted by the First Continental Congress as section four of its Resolves.

Advertisement

The following sheets were written during the late non-importation agreement: but that agreement being dissolved before they were ready for the press, it was then judged unseasonable to publish them. Many will, perhaps, be surprised to see the legislative authority of the British parliament over the colonies denied *in every instance.* Those, the writer informs, that, when he began this piece, he would probably have been surprised at such an opinion himself; for that it was the *result*, and not the *occasion*, of his disquisitions. He entered upon them with a view and expectation of being able to trace some constitutional line between those cases in which we ought, and those in which we ought not, to acknowledge the power of parliament over us. In the prosecution of his inquiries he became fully convinced that such a line does not exist; and that there can be no medium between acknowledging and denying that power in *all* cases. Which of these two alternatives is most consistent with law, with the principles of liberty, and with the happiness of the colonies, let the publick determine. To them the writer submits his sentiments with that respectful deference to their judgment, which, in all questions affecting them, every individual should pay.

August 17th, 1774.

[205] Those who allege that the parliament of Great Britain have power to make laws binding the American colonies, reason in the

[1] *The Works of James Wilson;* edited by Bird Wilson. Philadelphia: Bronson & Channing, 1804. Vol. III.

following manner. "That there is and must be in every state a supreme, irrestible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside:" [2] "That this supreme power is, by the constitution of Great Britain, vested in the king, lords, and commons:" [3] "That, therefore, the acts of the king, lords, and commons, or, in other words, acts of parliament, have, by the British constitution, a binding force on the American colonies, they composing a part of the British empire."

I admit that the principle, on which this argument is founded, is of great importance: its importance, however, is derived from its tendency to promote the ultimate end of all government. But if the application of it would, in any instance, destroy, instead of promoting, that end, it ought, in that instance, to be rejected: for to admit it, would be to sacrifice the end to the means, which are valuable only so far as they advance it.

All men are, by nature, equal and free: no one has a right to any authority over another without his consent: all lawful government is founded on the consent of those who are subject to it: such consent was given with a view to ensure and to increase the happiness of the governed, above what they could enjoy in an independent and unconnected state of nature. The consequence is, that the happiness of the society is the *first* law of every government.[4]

This rule is founded on the law of nature: it must control every political maxim: it must regulate the legislature itself.[5] The people have a right to insist that this rule be observed; and are entitled to demand a moral security that the legislature will observe it. If they have not the first, they are slaves; if they have not the second, they are, every moment, exposed to slavery. For "civil liberty is nothing else but natural liberty, devested of that part which constituted the independence of individuals, by the authority, which it confers on sovereigns, attended with a right of insisting upon their making a good use of their authority, and with a moral security that this right will have its effect."[6]

Let me now be permitted to ask—Will it ensure and increase the

[2] 4 Bl. Com. 48, 49.

[3] Id. 50, 51.

[4] The right of sovereignty is that of commanding finally—but in order to procure real felicity; for if this end is not obtained, sovereignty ceases to be a legitimate authority. 2 Burlamaqui, 32, 33.

[5] The law of nature is superiour in obligation to any other. 1 Bl. Com. 41.

[6] 2 Burlamaqui, 19.

happiness of the American colonies, that the parliament of Great Britain should possess a supreme, irresistible, uncontrolled authority over them? Is such an authority consistent with their liberty? Have they any security that it will be employed only for their good? Such a security is absolutely necessary. Parliaments are not infallible: they are not always just. The members, of whom they are composed, are human; and, therefore, they may err; they are influenced by interest; and, therefore, they may deviate from their duty. The acts of the body must depend upon the opinions and dispositions of the members: the acts of the body may, then, be the result of errour and of vice. It is no breach of decency to suppose all this: the British constitution supposes it: "it supposes that parliaments may betray their trust, and provides, as far as human wisdom can provide, that they may not be able to do so long, without a sufficient control." [7] Without provisions for this purpose, the temple of British liberty, like a structure of ice, would instantly dissolve before the fire of oppression and despotick sway.

It will be very material to consider the several securities, which the inhabitants of Great Britain have, that their liberty will not be destroyed by the legislature, in whose hands it is intrusted. If it shall appear, that the same securities are not enjoyed by the colonists; the undeniable consequence will be, that the colonists are not under the same obligations to intrust their liberties into the hands of the same legislature: for the colonists are entitled to all [8] the privileges of Britons. We have committed no crimes to forfeit them: we have too much spirit to resign them. We will leave our posterity as free as our ancestors left us.

To give to any thing that passes in parliament the force of a law, the consent of the king, of the lords, and of the commons [9] is absolutely necessary.[10] If, then, the inhabitants of Great Britain possess a sufficient restraint upon any of these branches of the legislature, their liberty is secure, provided they be not wanting to themselves. Let us take a view of the restraints, which they have upon the house of commons.

But from what source does this mighty, this uncontrolled authority of the house of commons flow? From the collective body of the commons of Great Britain. This authority, must, therefore,

[7] Bolingbroke, Diss. on Parties, I, 11, 12, p. 167, 179.
[8] Williams' Reports. 75.
[9] 4 Ins. 25.
[10] 2 Ld. Ray, 990.

originally reside in them: for whatever they convey to their representatives, must ultimately be in themselves. And have those, whom we have hitherto been accustomed to consider as our fellow subjects, an absolute and unlimited power over us? Have they a natural right to make laws, by which we may be deprived of our properties, of our liberties, of our lives? By what title do they claim to be our masters? What act of ours has rendered us subject to those, to whom we were formerly equal? Is British freedom denominated from the *soil*, or from the *people* of Britain? If from the latter, do they lose it by quitting the soil? Do those, who embark, freemen, in Great Britain, disembark, slaves, in America? Are those, who fled from the oppression of regal and ministerial tyranny, now reduced to a state of vassalage to those, who, then, equally felt the same oppression? Whence proceeds this fatal change? Is this the return made us for leaving our friends and our country—for braving the danger of the deep—for planting a wilderness, inhabited only by savage men and savage beasts—for extending the dominions of the British crown—for increasing the trade of the British merchants—for augmenting the rents of the British landlords—for heightening the wages of the British artificers? Britons should blush to make such a claim: Americans would blush to own it.

It is not, however, the ignominy only, but the danger also, with which we are threatened, that affects us. The many and careful provisions which are made by the British constitution, that the electors of members of parliament may be prevented from choosing representatives, who would betray them; and that the representatives may be prevented from betraying their constituents with impunity, sufficiently evince, that such precautions have been deemed absolutely necessary for securing and maintaining the system of British liberty.

How would the commons of Great Britain startle at a proposal, to deprive them of their share in the legislature, by rendering the house of commons independent of them! With what indignation would they hear it! What resentment would they feel and discover against the authors of it! Yet the commons of Great Britain would suffer less inconvenience from the execution of such a proposal, than the Americans will suffer from the extension of the legislative authority of parliament over them.

The members of parliament, their families, their friends, their

posterity must be subject, as well as others, to the laws. Their interest, and that of their families, friends, and posterity, cannot be different from the interest of the rest of the nation. A regard to the former will, therefore, direct to such measures as must promote the latter. But is this the case with respect to America? Are the legislators of Great Britain subject to the laws which are made for the colonies? Is their interest the same with that of the colonies? If we consider it in a large and comprehensive view, we shall discern it to be undoubtedly the same; but few will take the trouble to consider it in that view; and of those who do, few will be influenced by the consideration. Mankind are usually more affected with a near though inferior interest, than with one that is superiour, but placed at a greater distance. As the conduct is regulated by the passions, it is not to be wondered at, if they secure the former, by measures which will forfeit the latter. Nay, the latter will frequently be regarded in the same manner as if it were prejudicial to them. It is with regret that I produce some late regulations of parliament as proofs of what I have advanced. We have experienced what an easy matter it is for a minister, with an ordinary share of art, to persuade the parliament and the people, that taxes laid on the colonies will ease the burthens of the mother country; which, if the matter is considered in a proper light, is in fact, to persuade them, that the stream of national riches, will be increased by closing up the fountain, from which they flow.

[222] Let us pause here a little.—Does neither the love of gain, the love of praise, nor the love of honour influence the members of the British parliament in favour of the Americans? On what principles, then—on what motives of action, can we depend for the security of our liberties, of our properties, of every thing dear to us in life, of life itself? Shall we depend on their veneration for the dictates of natural justice? A very little share of experience in the world—a very little degree of knowledge in the history of men, will sufficiently convince us, that a regard to justice is by no means the ruling principle in human nature. He would discover himself to be a very sorry statesman, who would erect a system of jurisprudence upon that slender foundation. "He would make," as my Lord Bacon says, "imaginary laws for imaginary commonwealths; and his discourses, like the stars, would give little light, because they are so high."

But this is not the worst that can justly be said concerning the

situation of the colonies, if they are bound by the acts of the British legislature. So far are those powerful springs of action, which we have mentioned, from interesting the members of the legislature in our favour, that, as has been already observed, we have the greatest reason to dread their operation against us. While the happy commons of Great Britain congratulate themselves upon the liberty which they enjoy, and upon the provisions—infallible, as far as they can be rendered so by human wisdom—which are made for perpetuating it to their latest posterity; the unhappy Americans have reason to bewail the dangerous situation to which they are reduced; and to look forward, with dismal apprehension, to those future scenes of woe, which, in all probability, will open upon their descendants.

What has been already advanced will suffice to show, that it is repugnant to the essential maxims of jurisprudence, to the ultimate end of all governments, to the genius of the British constitution, and to the liberty and happiness of the colonies, that they should be bound by the legislative authority of the parliament of Great Britain. Such a doctrine is not less repugnant to the voice of her laws. In order to evince this, I shall appeal to some authorities from the books of law, which show expressly, or by a necessary implication, that the colonies are not bound by the acts of the British parliament; because they have no share in the British legislature.

The first case I shall mention was adjudged in the second year of Richard the third. It was a solemn determination of all the judges of England, met in the exchequer chamber, to consider whether the people in Ireland were bound by an act of parliament made in England. They resolved, "that they were not, as to such things as were done in Ireland; but that what they did out of Ireland must be conformable to the laws of England, because they were subjects of England. Ireland," said they, "has a parliament who make laws; and our statutes do not bind them; *because they do not send knights to parliament:* but their persons are the subjects of the king, in the same manner as the inhabitants of Calais, Gascoigne, and Guienne." [11]

[229] From this authority it follows, that it is by no means a rule, that the authority of parliament extends to all the subjects of the crown. The inhabitants of Ireland were the subjects of the king as

[11] 4 Mod. 225. 7 Rep. 22b. Calvin's case.

of his crown of England; but it is expressly resolved, in the most solemn manner, that the inhabitants of Ireland are not bound by the statutes of England. Allegiance to the king and obedience to the parliament are founded on very different principles. The former is founded on protection: the latter, on representation. An inattention to this difference has produced, I apprehend, much uncertainty and confusion in our ideas concerning the connexion, which ought to subsist between Great Britain and the American colonies.

[235] I am sufficiently aware of an objection, that will be made to what I have said concerning the legislative authority of the British parliament. It will be alleged, that I throw off all dependence on Great Britain. . . . I shall take some pains to obviate the objection, and to show that a denial of the legislative authority of the British parliament over America is by no means inconsistent with that connexion, which ought to subsist between the mother country and her colonies, and which, at the first settlement of those colonies, it was intended to maintain between them: but that, on the contrary, that connexion would be entirely destroyed by the extension of the power of parliament over the American plantations.

Let us examine what is meant by a *dependence* on Great Britain: for it is always of importance clearly to define the terms that we use. Blackstone, who, speaking of the colonies, tells us, that "they are no part of the mother country, but distinct (though dependent) dominions," [12] explains dependence in this manner. Dependence is very little else, but an obligation to conform to the will or law of that superiour person or state, upon which the inferiour depends. The original and true ground of this superiority, in the case of Ireland, is what we usually call, though somewhat improperly, the right of conquest; a right allowed by the law of nations, if not by that of nature; but which, in reason and civil policy, can mean nothing more, than that, in order to put an end to hostilities, a compact is either expressly or tactitly made between the conqueror and the conquered, that if they acknowledge the victor for their master, he will treat them for the future as subjects, and not as enemies." [13]

The original and true ground of the superiority of Great Britain

[12] 1 Bl. Com. 107.
[13] Id. 103.

over the American colonies is not shown in any book of the law, unless, as I have already observed, it be derived from the right of conquest. But I have proved, and I hope satisfactorily, that this right is altogether inapplicable to the colonists. The original of the superiority of Great Britain over the colonies is, then, unaccounted for; and when we consider the ingenuity and pains which have lately been employed at home on this subject, we may justly conclude, that the only reason why it is not accounted for, is, that it cannot be accounted for. The superiority of Great Britain over the colonies ought, therefore, to be rejected; and the dependence of the colonies upon her, it is to be construed into "an obligation to conform to the will or law of the superiour state," ought, in *this* sense, to be rejected also.

My sentiments concerning this matter are not singular. They coincide with the declarations and remonstrances of the colonies against the statutes imposing taxes on them. It was their unanimous opinion, that the parliament have no right to exact obedience to those statutes; and, consequently, that the colonies are under no obligation to obey them. The dependence of the colonies on Great Britain was denied, in those instances; but a denial of it in those instances is, in effect, a denial of it in all other instances. For, if dependence is an obligation to conform to the will or law of the superiour state, any exceptions to that obligation must destroy the dependence. If, therefore, by a dependence of the colonies on Great Britain, it is meant, that they are obliged to obey the laws of Great Britain, reason, as well as the unanimous voice of the Americans, teaches us to disown it. Such a dependence was never thought of by those who left Britain, in order to settle in America; nor by their sovereigns, who gave them commissions for that purpose. Such an obligation has no correspondent right: for the commons of Great Britain have no dominion over their equals and fellow subjects in America: they can confer no right to their delegates to bind those equals and fellow subjects by laws.

There is another, and a much more reasonable meaning, which may be intended by the dependence of the colonies on Great Britain. The phrase may be used to denote the obedience and loyalty, which the colonists owe to the *kings* of Great Britain. If it should be alleged, that this cannot be the meaning of the expression, because it is applied to the kingdom, and not to the king, I give the same answer that my Lord Bacon gave to those who said that

allegiance related to the kingdom and not to the king; because in the statutes there are these words—"born within the allegiance of England"—and again—"born without the allegiance of England." "There is no trope of speech more familiar," says he, "than to use the place of addition for the person. So we say commonly, the line of York, or the line of Lancaster, for the lines of the duke of York, or the duke of Lancaster. So we say the possessions of Somerset or Warwick, intending the possessions of the dukes of Somerset, or earls of Warwick. And in the very same manner, the statute speaks, allegiance of England, for allegiance of the king of England." [14]

Dependence on the mother country seems to have been understood in this sense, both by the first planters of the colonies, and also by the most eminent lawyers, at that time, in England.

Those who launched into the unknown deep, in quest of new countries and habitations, still considered themselves as subjects of the English monarchs, and behaved suitably to that character; but it no where appears, that they still considered themselves as represented in an English parliament, or that they thought the authority of the English parliament extended over them. They took possession of the country in the *king's* name: they treated, or made war with the Indians by *his* authority: they held the lands under *his* grants, and paid *him* the rents reserved upon them: they established governments under the sanction of *his* prerogative, or by virtue of *his* charters:—no application for those purposes was made to the parliament: no ratification of the charters or letters patent was solicited from that assembly, as is usual in England with regard to grants and franchises of much less importance.

My Lord Bacon's sentiments on this subject ought to have great weight with us. His immense genius, his universal learning, his deep insight into the laws and constitution of England, are well known and much admired. Besides, he lived at that time when settling and improving the American plantations began seriously to be attended to, and successfully to be carried into execution. Plans for the government and regulation of the colonies were then forming: and it is only from the first general idea of these plans, that we can unfold, with precision and accuracy, all the more minute and intricate parts, of which they now consist. "The settlement of colonies," says he, "must proceed from the option

[14] 4 Lord Bacon, 192, 193. Case of the postnati of Scotland.

of those who will settle them, else it sounds like an exile: they must be raised by the *leave*, and not by the *command* of the *king*. At their setting out, they must have their commission, or letters patent, from the *king*, that so they may acknowledge their *dependency upon the crown* of England, and under his protection." In another place he says, "that they still must be subjects of the realm." [15] "In order to regulate all the inconveniences, which will insensibly grow upon them," he proposes, "that the king should erect a subordinate council in England, whose care and charge shall be, to advise, and put in execution, all things which shall be found fit for the good of those new plantations; who, upon all occasions, shall give an account of their proceedings to the king or the council board, and from *them* receive such directions, as may best agree with the government of that place." [16] It is evident, from these quotations, that my Lord Bacon had no conception that the parliament would or ought to interpose,[17] either in the settlement or the government of the colonies. The only relation, in which he says the colonists must still continue, is that of subjects: the only dependency, which they ought to acknowledge, is a dependency on the crown.

This is a dependence, which they have acknowledged hitherto; which they acknowledge now; and which, if it is reasonable to judge of the future by the past and the present, they will continue to acknowledge hereafter. It is not a dependence, like that contended for on parliament, slavish and unaccountable, or accounted for only by principles that are false and inapplicable: it is a dependence founded upon the principles of reason, of liberty, and of law. Let us investigate its sources.

The colonists ought to be dependent on the king, because they have hitherto enjoyed, and still continue to enjoy, his protection. Allegiance is the faith and obedience, which every subject owes to his prince. This obedience is founded on the protection derived from government: for protection and allegiance are the reciprocal bonds, which connect the prince and his subjects. . . .

[243] Thus we see, that the subjects of the king, though they

[15] The parliament have no subjects. My Lord Bacon gives, in this expression, an instance of the trope of speech before mentioned. He says, the subjects of the *realm*, when he means the subjects of the *king* of the realm.

[16] 1 Lord Bacon, 725, 726.

[17] It was chiefly during the confusions of the republick, when the king was in exile, and unable to assert his rights, that the house of commons began to interfere in colony matters.

reside in foreign countries, still owe the duties of allegiance, and are still entitled to the advantages of it. They transmit to their posterity the privilege of naturalization, and all the other privileges which are the consequences of it.[18]

Now we have explained the dependence of the Americans. They are the subjects of the king of Great Britain. They owe him allegiance. They have a right to the benefits which arise from preserving that allegiance inviolate. They are liable to the punishments which await those who break it. This is a dependence, which they have always boasted of. The principles of loyalty are deeply rooted in their hearts; and there they will grow and bring forth fruit, while a drop of vital blood remains to nourish them. Their history is not stained with rebellious and treasonable machinations: an inviolable attachment to their sovereign, and the warmest zeal for his glory, shine in every page.

From this dependence, abstracted from every other source, arises a strict connexion between the inhabitants of Great Britain and those of America. They are fellow subjects; they are under allegiance to the same prince; and this union of allegiance naturally produces a union of hearts. It is also productive of a union of measures through the whole British dominions. To the king is intrusted the direction and management of the great machine of government. He therefore is fittest to adjust the different wheels, and to regulate their motions in such a manner as to cooperate in the same general designs. He makes war: he concludes peace: he forms alliances: he regulates domestick trade by his prerogative, and directs foreign commerce by his treaties with those nations, with whom it is carried on. He names the officers of government; so that he can check every jarring movement in the administration. He has a negative on the different legislatures throughout his dominions, so that he can prevent any repugnancy in their different laws.

The connexion and harmony between Great Britain and us, which it is her interest and ours mutually to cultivate, and on which her prosperity, as well as ours, so materially depends, will be better preserved by the operation of the legal prerogatives of the crown, than by the exertion of an unlimited authority by parliament.

[18] 1 Bl. Com. 371.

DANIEL LEONARD

MASSACHUSETTENSIS [1]

1774–75

The literature of protest flourished after 1764, but there was relatively little loyalist pamphleteering until after the Boston Tea Party and the meeting of the First Continental Congress. Among the best of the loyalist writers was Daniel Leonard, a young Boston attorney. Writing under the name of "Massachusettensis," he published seventeen letters in the *Massachusetts Gazette and Post Boy* between December, 1774 and April, 1775. Shortly after the last of them appeared they were collected and printed in book form. His arguments should be compared with those of such loyalists as Samuel Seabury, Joseph Galloway, and Jonathan Boucher.

Letter I

To the Inhabitants of the Province of Massachusetts-Bay

. . . . It is too true to be denied that ever since the origin of our controversy with Great Britain the press, in this town has been much devoted to the partizans of liberty; they have been indulged in publishing what they pleased, *sas vel nefas*, while little has been published on the part of the government; the effect this must have had upon the minds of the people in general is obvious; they must have formed their opinion upon a partial view of the subject, and of course it must have been in some degree erroneous: In short, the changes have been rung so often upon oppression, tyranny and slavery, that, whether sleeping or waking, they are continually vibrating in our ears; and it is now high time to ask ourselves whether we have not been deluded by sound only.

My dear countrymen, let us divest ourselves of prejudice, take a view of our present wretched situation, contrast it with our former happy one, carefully investigate the cause, and industriously seek some means to escape the evils we now feel, and prevent those that we have reason to expect. . . .

Letter II

. . . . I confess myself to be one of those that think our present calamity is in a great measure to be attributed to the bad policy of a popular party in this province; and that their measures for

[1] Boston. 1775.

several years past, whatever may have been their intention, have been diametrically opposite to their profession,—the public good; and cannot at present, but compare their leaders to a false guide that having led a benighted traveller through many mazes and windings in a thick wood, finds himself at length on the brink of a horrid precipice, and, to save himself, seizes fast hold of his follower, to the utmost hazard of plunging both headlong down the steep, and being dashed in pieces together against the rocks below.

Letter III

Thus, my friends, those very persons that had made you believe that every attempt to strengthen government and save our charter, was an infringement of your privileges, by little and little, destroyed your real liberty, subverted your charter constitution, abridged the freedom of the house, annihilated the freedom of the board, and rendered the governor a mere doge of Venice. They engrossed all the power of the province into their own hands: A democracy or republic it has been called, but it does not deserve the name of either; it was, however, a despotism cruelly carried into execution by mobs and riots, and more incompatible with the rights of mankind, than the enormous monarchies of the East. The absolute necessity of the interposition of parliament is apparent. . . .

Letter V

Sedition has already been marked through its zigzag path to the present times. When the statute for regulating the government arrived, a match was put to the train, and the mine that had been long forming, sprung, and threw the whole province into confusion and anarchy. The occurrencies of the summer and autumn past are so recent and notorious, that a particular detail of them is unnecessary. Suffice it to say, that every barrier that civil government had erected for the security of property, liberty and life was broken down, and law, constitution and government trampled under foot by the rudest invaders. I shall not dwell upon these harsh notes much longer. I shall yet become an advocate for the leading whigs; much must be allowed to men in their situation, forcibly actuated by the chagrin of disappointment, the fear of punishment, and the fascination of hope at the same time.

Perhaps the whole story of empire does not furnish another instance of a forcible opposition to government with so much apparent and little real cause, with such apparent probability without any possibility of success. . . .

The security of the people from internal rapacity and violence, and from foreign invasion is the end and design of government. The simple forms of government are monarchy, aristocracy and democracy, that is, where the authority of the state is vested in one, a few, or the many. Each of these species of government has advantages peculiar to itself, and would answer the ends of government, were the persons intrusted with the authority of the state always guided themselves by unerring wisdom and public virtue; but rulers are not always exempt from the weakness and depravity which make government necessary to society. Thus monarchy is apt to rush headlong into tyranny, aristocracy to beget faction and multiplied usurpation, and democracy, to degenerate into tumult, violence and anarchy. A government formed upon these three principles in due proportion, is the best calculated to answer the ends of government, and to endure. Such a government is the British constitution, consisting of Kings, Lords and Commons, which at once includes the principal excellencies, and excludes the principal defects of the other kinds of government. It is allowed, both by Englishmen and foreigners, to be the most perfect system that the wisdom of the ages has produced. The distributions of power are so just, and the proportions so exact, as at once to support and controul each other. An Englishman glories in being subject to and protected by such a government. The colonies are a part of the British empire. The best writers upon the law of nations, tell us, that when a nation takes possession of a distant country, and settles there, that country though separated from the principal establishment or mother country, naturally becomes a part of the state, equal with its ancient possessions. Two supreme or independent authorities cannot exist in the same state. It would be what is called *imperium in imperio*, the height of political absurdity. The analogy between the political and human body is great. Two independent authorities in a state would be like two distinct principles of volition and action in the human body, dissenting, opposing and destroying each other. If then we are a part of the British empire, we must be subject to the supreme power of the state, which is vested in the

estates of parliament, notwithstanding each of the colonies have legislative and executive powers of their own, delegated or granted to them for the purposes of regulating their own internal police, which are subordinate to, and must necessarily be subject to the checks, controul and regulation of the supreme authority.

This doctrine is not new, but the denial of it is. It is beyond a doubt that it was the sense both of the parent country and our ancestors that they were to remain subject to parliament; it is evident from the charter itself, and this authority has been exercised by parliament, from time to time, almost ever since the first settlement of the country, and has been expressly acknowledged by our provincial legislatures. It is not less our interest than our duty to continue subject to the authority of parliament, which will be more fully considered hereafter. The principal argument against the authority of parliament, is this, the Americans are intitled to all the privileges of an Englishman, it is the privilege of an Englishman to be exempt from all laws that he does not consent to in person, or by representative; the Americans are not represented in parliament, and therefore are exempt from acts of parliament, or in other words, not subject to its authority. This appears specious; but leads to such absurdities as demonstrate its fallacy. If the colonies are not subject to the authority of parliament, Great Britain and the colonies must be distinct states, as compleatly so as England and Scotland were before the union, or as Great Britain and Hanover are now: The colonies in that case will owe no allegiance to the imperial crown, and perhaps not to the person of the King, as the title to the crown is derived from an act of parliament, made since the settlement of this province, which act respects the imperial crown only. Let us wave this difficulty, and suppose allegiance due from the colonies to the person of the King of Great Britain; he then appears in a new capacity, of King of America, or rather in several new capacities, of King of Massachusetts, King of Rhode Island, King of Connecticut, &c. &c. For if our connexion with Great Britain by the parliament be dissolved, we shall have none among ourselves, but each colony becomes as distinct from the others as England was from Scotland before the Union. Some have supposed that each state having one and the same person for its King is a sufficient connection; were he an absolute Monarch it might be, but in a mixed government, it is no union at all: For as the King must

govern each state by its parliament, those several parliaments would pursue the particular interest of its own state, and however well disposed the King might be to pursue a line of interest that was common to all, the checks and controul that he would meet with, would render it impossible. If the King of Great Britain has really these new capacities, they ought to be added to his titles; and another difficulty will arise, the prerogatives of these new crowns have never been defined or limited. Is the monarchical part of the several provincial constitutions to be nearer or more remote from absolute monarchy, in an inverted ratio to each one's approaching to, or receding from a republic? But let us suppose the same prerogatives inherent in the several American crowns, as are in the imperial crown of Great Britain, where shall we find the British constitution that we all agree we are entitled to? We shall seek for it in vain in our provincial assemblies. They are but faint sketches of the estates of parliament. The houses of representatives or Burgesses have not all the powers of the house of commons, in the charter governments they have no more than what is expressly granted by their several charters. The first charters granted to this province did not impower the assembly to tax the people at all. Our council-boards are as destitute of the constitutional authority of the house of lords, as their several members are of the noble independence and splendid appendages of peerage. The house of peers is the bulwark of the British constitution, and through successive ages, has withstood the shocks of monarchy, and the sappings of democracy, and the constitution gained strength by the conflict. Thus the supposition of our being independent states, or exempt from the authority of parliament, destroys the very idea of our having a British constitution. The provincial constitutions, considered as subordinate, are generally well adapted to those purposes of government, for which they were intended, that is, to regulate the internal police of the several colonies; but have no principle of stability within themselves, they may support themselves in moderate times, but would be merged by the violence of turbulent ones, and the several colonies become wholly monarchical or wholly republican, were it not for the checks, controuls, regulations and supports of the supreme authority of the empire. Thus the argument that is drawn from their first principle of our being intitled to English liberties, destroys the principle itself, it de-

prives us of the bill of rights, and all the benefits resulting from the revolution, of English laws and of the British constitution.

Letter VI

It is curious indeed to trace the denial and oppugnation to the supreme authority of the state. When the stamp-act was made, the authority of parliament to impose internal taxes was denied, but their right to impose external ones; or in other words, to lay duties upon goods and merchandise was admitted. When the act was made imposing duties upon tea, &c. a new distinction was set up, that the parliament had a right to lay duties upon merchandise for the purpose of regulating trade, but not for the purpose of raising a revenue: That is, the parliament had good right and lawful authority to lay the former duty of a shilling on the pound, but had none to lay the present duty of three pence. Having got thus far safe, it was only taking one step more to extricate ourselves entirely from their fangs, and become independent states; that our patriots most heroically resolved upon, and flatly denied that parliament had a right to make any laws whatever, that should be binding upon the colonies. There is no possible medium between absolute independence and subjection to the authority of parliament. He must be blind indeed that cannot see our dearest interest in the latter, notwithstanding many pant after the former; misguided men! could they once overtake their wish, they would be convinced of the madness of their pursuit. . . . The realm of England is an appropriate term for the ancient realm of England, in contradiction to Wales and other territories that have been annexed to it. These as they have been severally annexed to the crown, whether by conquest or otherwise, became a part of the empire, and subject to the authority of parliament, whether they send members to parliament or not, and whether they have legislative powers of their own or not.

Thus Ireland, who has perhaps the greatest possible subordinate legislature, and sends no members to the British parliament, is bound by its acts, when expressly named. Guernsey and Jersey are no part of the realm of England, nor are they represented in parliament, but are subject to its authority: And in the same predicament are the American colonies, and all the other dispersions of the empire. . . .

Let us now recur to the first charter of this province, and we shall find irresistable evidence, that our being part of the empire, subject to the supreme authority of the state, bound by its laws and entitled to its protection, were the very terms and conditions by which our ancestors held their lands and settled the province. Our charter, like all other American charters, are under the great seal of England; the grants are made by the King, for his heirs and *successors*, the several tenures to be made of the King, his heirs and *successors*, in like manner are the reservations. It is apparent the king acted in his royal capacity, as King of England, which necessarily supposes the territory granted, to be a part of the English dominions, holden of the crown of England. . . .

. . . . If a person born in England removes to Ireland and settles there, he is then no longer represented in the British parliament, but he and his posterity are and will ever be subject to the authority of the British parliament: If he removes to Jersey, Guernsey, or any other parts of the British dominions that send no members to parliament, he will still be in the same predicament. So that the inhabitants of the American colonies do in fact enjoy all the liberties and immunities of natural-born subjects. We are entitled to no greater privileges than those that are born within the realm, and they can enjoy no other than we do, when they reside out of it. Thus, it is evident that this clause [1] amounts to no more than the royal assurance, that we are a part of the British empire, are not aliens but natural-born subjects; and as such bound to obey the supreme power of the state, and entitled to protection from it. . . .

Letter XI

. . . The eloquence of the bar, the desk and the senate, the charms of poetry, the expressions of painting, sculpture and statuary have conspired to fix and rivet ideas of independence upon the mind of the colonists. The overwhelming torrent supplied from so many fountains rolled on with increasing rapidity and violence, till it became superior to all restraint. It was the reign of passion; the small, still voice of reason was refused audience. . . .

[1] [The clause referred to is that in the charter granting to all of the inhabitants of the colony "all liberties and immunities of free and natural subjects, within any of the dominions of us, our heirs or successors, to all intents, constructions and purposes whatsoever, as if they and every one of them were born within the realm of England."]

Letter XVII

Novanglus abuses me, for saying, that the whigs aim at independence. The writer from Hampshire county is my advocate: He frankly asserts the independency of the colonies without any reserve, and is the only consistent writer I have met with on that side of the question: for by separating us from the King as well as the parliament, he is under no necessity of contradicting himself. Novanglus strives to hide the inconsistencies of his hypothesis, under a huge pile of learning. Surely he is not to learn that arguments drawn from obsolete maxims, raked out of the ruins of the feudal system, or from principles of absolute monarchy, will not conclude to the present constitution of government: When he has finished his essays, he may expect some particular remarks upon them. I should not have taken the trouble of writing these letters had I not been satisfied that real and permanent good would accrue to this province, and indeed to all the colonies, from a speedy change of measures. Public justice and generosity are no less characteristic of the English, than their private honesty and hospitality. The total repeal of the stamp-act, and the partial repeal of the act imposing duties on paper, &c. may convince us that the nation has no disposition to injure us. We are blessed with a King that reflects honor upon a crown; He is so far from being avaricious, that he has relinquished a part of his revenue; and so far from being tyrannical, that he has generously surrendered part of his prerogative for the sake of freedom: His court is so far from being tinctured with dissipation, that the palace is rather an academy of the literati, and the royal pair are as exemplary in every private virtue, as they are exalted in their stations. We have only to cease contending with the supreme legislature, respecting its authority, with the King respecting his prerogatives, and with Great Britain respecting our subordination; to dismiss our illegal committees, disband our forces, despise the thraldom of *arrogant congresses*, and submit to constitutional government, to be happy.

JOHN ADAMS

NOVANGLUS: OR, A HISTORY OF THE DISPUTE WITH AMERICA, FROM ITS ORIGIN, IN 1754, TO THE PRESENT TIME.[1]

1774–75

The series of papers which make up this work were written by Adams in answer to Massachusettensis, and were published in the *Boston Gazette* between November, 1774 and April, 1775, the last appearing two days before the outbreak of hostilities. For all of its diffuseness, it is probably the best of the many tracts written after the meeting of the First Continental Congress and in defence of its action.

Letter III

Massachusettensis, conscious that the people of this continent have the utmost abhorrence of treason and rebellion, labors to avail himself of the magic in these words. But his artifice is vain. The people are not to be intimidated by hard words from a necessary defence of their liberties. Their attachment to their constitution, so dearly purchased by their own and their ancestors' blood and treasure; their aversion to the late innovations; their horror of arbitrary power and the Romish religion, are much deeper rooted than their dread of rude sounds and unmannerly language. . . . They know upon what hinge the whole dispute turns; that the *fundamentals* of the government over them are disputed; that the minister pretends, and had the influence to obtain the voice of the last parliament in his favor, that parliament is the only supreme, sovereign, absolute, and uncontrollable legislative over all the colonies; that, therefore, the minister and all his advocates will call resistance to acts of parliament by the names of treason and rebellion. But, at the same time, they know that, in their own opinions, and in the opinions of all the colonies, parliament has no authority over them, excepting to regulate their trade, and this not by any principle of common law, but merely by the consent of the colonies, founded on the obvious necessity of a case which was never in contemplation of that law, nor provided for by it; that, therefore, they have as good a right to charge that minister, Massachusettensis, and the whole army to which he had fled for protection, with treason

[1] *Works of John Adams*, vol. IV.

and rebellion. For, if the parliament has not a legal authority to overturn their constitution, and subject them to such acts as are lately passed, every man who accepts of any commission, and takes any steps to carry those acts into execution, is guilty of overt acts of treason and rebellion against his majesty, his royal crown and dignity, as much as if he should take arms against his troops, or attempt his sacred life. . . .

. . . . the terms "British Empire" are not the language of the common law, but the language of newspapers and political pamphlets; that the dominions of the king of Great Britain have no power coextensive with them. I would ask, by what law the parliament has authority over America? By the law of God, in the Old and New Testament, it has none; by the law of nature and nations, it has none; by the common law of England, it has none, for the common law and the authority of parliament founded on it, never extended beyond the four seas; by statute law it has none, for no statute was made before the settlement of the colonies for this purpose; and the declaratory act, made in 1766, was made without our consent, by a parliament which had no authority beyond the four seas. What religious, moral, or political obligations then are we under to submit to parliament as a supreme legislative? None at all. When it is said, that if we are not subject to the supreme authority of parliament, Great Britain will make us so, all other laws and obligations are given up, and recourse is had to the *ratio ultima* of Louis XIV. and the *suprema lex* of the king of Sardinia,—to the law of brickbats and cannon balls, which can be answered only by brickbats and balls.

Letter IV

The truth is, the authority of parliament was never generally acknowledged in America. More than a century since, Massachusetts and Virginia both protested against even the act of navigation, and refused obedience, for this very reason, because they were not represented in parliament, and were therefore not bound; and afterwards confirmed it by their own provincial authority. And from that time to this, the general sense of the colonies has been, that the authority of parliament was confined to the regulation of trade, and did not extend to taxation or internal legislation. . . .

Letter VII

After a long discourse, which has nothing in it but what has been answered already, he comes to a great subject indeed, the British constitution; and undertakes to prove, that "the authority of parliament extends to the colonies."

Why will not this writer state the question fairly? The whigs allow that, from the necessity of a case not provided for by common law, and to supply a defect in the British dominions, which there undoubtedly is, if they are to be governed only by that law, America has all along consented, still consents, and ever will consent, that parliament being the most powerful legislature in the dominions, should regulate the trade of the dominions. This is founding the authority of parliament to regulate our trade, our *compact* and *consent* of the colonies, not upon any principle of common or statute law; not upon any original principle of the English constitution; not upon the principle that parliament is the supreme and sovereign legislature over them in all cases whatsoever. The question is not, therefore, whether the authority of parliament extends to the colonies in any case, for it is admitted by the whigs, that it does in that of commerce; but whether it extends in all cases.

We are then detained with a long account of the three simple forms of government; and are told, that "the British constitution, consisting of king, lords, and commons, is formed upon the principles of monarchy, aristocracy, and democracy, in due proportion; that it includes the principal excellencies, and excludes the principal defects of the other kinds of government,—the most perfect system that the wisdom of ages has produced, and Englishmen glory in being subject to, and protected by it."

Then we are told, "that the colonies are a part of the British empire." But what are we to understand by this? Some of the colonies, most of them, indeed, were settled before the kingdom of Great Britain was brought into existence. The union of England and Scotland was made and established by act of parliament in the reign of Queen Anne, and it was this union and statute which erected the kingdom of Great Britain. The colonies were settled long before, in the reigns of the Jameses and Charleses. What authority over them had Scotland? Scotland, England, and the colonies were all under one king before that; the two crowns of Eng-

land and Scotland united on the head of James I., and continued united on that of Charles I., when our first charters were granted. Our charter, being granted by him, who was king of both nations, to our ancestors, most of whom were *post nati*, born after the union of the two crowns, and consequently, as was adjudged in Calvin's case, free, natural subjects of Scotland, as well as England,—had not the king as good a right to have governed the colonies by his Scottish, as by his English parliament, and to have granted our charters under the seal of Scotland, as well as that of England?

But to wave this. If the English parliament were to govern us, where did they get the right, without our consent, to take the Scottish parliament into a participation of the government over us? When this was done, was the American share of the democracy of the constitution consulted? If not, were not the Americans deprived of the benefit of the democratical part of the constitution? And is not the democracy as essential to the English constitution as the monarchy or aristocracy? Should we have been more effectually deprived of the benefit of the British or English constitution, if one or both houses of parliament, or if our house and council, had made this union with the two houses of parliament in Scotland, without the king?

If a new constitution was to be formed for the whole British dominions, and a supreme legislature coextensive with it, upon the general principles of the English constitution, an equal mixture of monarchy, aristocracy, and democracy, let us see what would be necessary. England has six millions of people, we will say; America had three. England has five hundred members in the house of commons, we will say; America must have two hundred and fifty. Is it possible she should maintain them there, or could they at such a distance know the state, the sense, or exigencies of their constituents? Ireland, too, must be incorporated, and send another hundred or two of members. The territory in the East Indies and West India Islands must send members. And after all this, every navigation act, every act of trade must be repealed. America, and the East and West Indies, and Africa too, must have equal liberty to trade with all the world, that the favored inhabitants of Great Britain have now. Will the ministry thank Massachusettensis for becoming an advocate for such a union, and incorporation of all the dominions of the King of Great Britain? Yet, without such a union, a legislature which shall be sovereign and supreme in all

cases whatsoever, and coextensive with the empire can never be established upon the general principles of the English constitution which Massachusettensis lays down, namely,—an equal mixture of monarchy, aristocracy, and democracy. Nay, further, in order to comply with this principle, this new government, this mighty colossus, which is to bestride the narrow world, must have a house of lords, consisting of Irish, East and West Indian, African, American, as well as English and Scottish noblemen; for the nobility ought to be scattered about all the dominions, as well as the representatives of the commons. If in twenty years more America should have six millions of inhabitants, as there is a boundless territory to fill up, she must have five hundred representatives. Upon these principles, if in forty years she should have twelve millions, a thousand; and if the inhabitants of the three kingdoms remain as they are, being already full of inhabitants, what will become of your supreme legislative? It will be translated, crown and all, to America. This is a sublime system for America. It will flatter those ideas of independency which the tories impute to them, if they have any such, more than any other plan of independency that I have ever heard projected.

"The best writers upon the law of nations tell us, that when a nation takes possession of a distant country, and settles there, that country, though separated from the principal establishment, or mother country, naturally becomes a part of the state, equal with its ancient possessions." We are not told who these "best writers" are. I think we ought to be introduced to them. But their meaning may be no more than that it is best they should be incorporated with the ancient establishment by contract, or by some new law and institution, by which the new country shall have equal right, powers, and privileges, as well as equal protection, and be under equal obligations of obedience, with the old. Has there been any such contract between Britain and the colonies? Is America incorporated into the realm? Is it a part of the realm? Is it a part of the kingdom? Has it any share in the legislative of the realm? The constitution requires that every foot of land should be represented in the third estate, the democratical branch of the constitution. How many millions of acres in America, how many thousands of wealthy landholders, have no representatives there?

But let these "best writers" say what they will, there is nothing in the law of nations, which is only the law of right reason applied

to the conduct of nations, that requires that emigrants from a state should continue, or be made, a part of the state.

The practice of nations has been different. The Greeks planted colonies, and neither demanded nor pretended any authority over them; but they became distinct, independent commonwealths. The Romans continued their colonies under the jurisdiction of the mother commonwealth; but, nevertheless, they allowed them the privileges of cities. Indeed, that sagacious city seems to have been aware of difficulties similar to those under which Great Britain is now laboring. She seems to have been sensible of the impossibility of keeping colonies planted at great distances, under the absolute control of her *senatus-consulta*. Harrington tells us, that "the commonwealth of Rome, by planting colonies of its citizens within the bounds of Italy, took the best way of propagating itself and naturalizing the country; whereas, if it had planted such colonies without the bounds of Italy, it would have alienated the citizens, and given a root to liberty abroad, that might have sprung up foreign, or savage, and hostile to her; *wherefore it never made any such dispersion of itself and its strength* till it was under the yoke of the emperors, who, disburdening themselves of the people, as having less apprehension of what they could do abroad than at home, took a contrary course." But these Italian cities, although established by decrees of the senate of Rome, to which the colonist was always party, either as a Roman citizen about to emigrate, or as a conquered enemy treating upon terms, were always allowed all the rights of Roman citizens, and were governed by senates of their own. It was the policy of Rome to conciliate her colonies by allowing them equal liberties with her citizens. . . .

Having mentioned the wisdom of the Romans, for not planting colonies out of Italy, and their reasons for it, I cannot help recollecting an observation of Harrington:—"For the colonies in the Indies," says he, "they are yet babes, that cannot live without sucking the breasts of their mother cities, but such as I mistake, if, when they come of age, they do not wean themselves, which causes me to wonder at princes that delight to be exhausted in that way." This was written one hundred and twenty years ago; the colonies are now nearer manhood than ever Harrington foresaw they would arrive in such a period of time. Is it not astonishing, then, that any British minister should ever have considered this subject so little as to believe it possible for him to new-model all our governments,

to tax us by an authority that never taxed us before, and subdue us to an implicit obedience to a legislature that millions of us scarcely ever thought any thing about?

I have said, that the practice of free governments alone can be quoted with propriety to show the sense of nations. But the sense and practice of nations is not enough. Their practice must be reasonable, just, and right, or it will not govern Americans.

Absolute monarchies, whatever their practices may be, are nothing to us; for, as Harrington observes, "Absolute monarchy, as that of the Turks, neither plants its people at home nor abroad, otherwise than as tenants for life or at will; wherefore, its national and provincial government is all one."

I deny, therefore, that the practice of free nations, of the opinions of the best writers upon the law of nations, will warrant the position of Massachusettensis, that, "when a nation takes possession of a distant territory, that becomes a part of the state equally with its ancient possessions." The practice of free nations and the opinions of the best writers are in general on the contrary.

I agree, that "two supreme and independent authorities cannot exist in the same state," any more than two supreme beings in one universe; and, therefore, I contend, that our provincial legislatures are the only supreme authorities in our colonies. Parliament, notwithstanding this, may be allowed an authority supreme and sovereign over the ocean, which may be limited by the banks of the ocean, or the bounds of our charters; our charters give us no authority over the high seas. Parliament has our consent to assume a jurisdiction over them. And here is a line fairly drawn between the rights of Britain and the rights of the colonies, namely, the banks of the ocean, or low-water mark; the line of division between common law, and civil or maritime law. If this is not sufficient,—if parliament are at a loss for any principle of natural, civil, maritime, moral, or common law, on which to ground any authority over the high seas, the Atlantic especially, let the colonies be treated like reasonable creatures, and they will discover great ingenuity and modesty. The acts of trade and navigation might be confirmed by provincial laws, and carried into execution by our own courts and juries, and in this case, illicit trade would be cut up by the roots forever. I knew the smuggling tories in New York and Boston would cry out against this, because it would not only destroy their profitable game of smuggling, but their whole place

and pension system. But the whigs, that is, a vast majority of the whole continent, would not regard the smuggling tories. In one word, if public principles, and motives, and arguments were alone to determine this dispute between the two countries, it might be settled forever in a few hours; but the everlasting clamors of prejudice, passion, and private interest drown every consideration of that sort, and are precipitating us into a civil war. . . .

If his majesty's title to the crown is "derived from an act of parliament, made since the settlement of these colonies," it was not made since the date of our charter. Our charter was granted by King William and Queen Mary, three years after the revolution; and the oaths of allegiance are established by a law of the province. So that our allegiance to his majesty is not due by virtue of any act of a British parliament, but by our own charter and province laws. It ought to be remembered that there was a revolution here, as well as in England, and that we, as well as the people of England, made an original, express contract with King William. . . .

. . . . There has been, from first to last, on both sides of the Atlantic, an idea, an apprehension, that it was necessary there should be some superintending power, to draw together all the wills, and unite all the strength of the subjects in all the dominions, in case of war, and in case of trade. The necessity of this, in case of trade, has been so apparent, that, as has often been said, we have consented that parliament should exercise such a power. In case of war, it has by some been thought necessary. But in fact and experience, it has not been found so. What though the proprietary colonies, on account of disputes with the proprietors, did not come in so early to the assistance of the general cause in the last war as they ought, and perhaps one of them not at all? The inconveniences of this were small, in comparison of the absolute ruin to the liberties of all which must follow the submission to parliament, in all cases, which would be giving up all the popular limitations upon the government. These inconveniences fell chiefly upon New England. She was necessitated to greater exertions; but she had rather suffer these again and again than others infinitely greater. However, this subject has been so long in contemplation, that it is fully understood now in all the colonies; so that there is no danger, in case of another war, of any colony's failing of its duty.

But, admitting the proposition in its full force, that it is absolutely necessary there should be a supreme power, coextensive

with all the dominions, will it follow that parliament, as now constituted, has a right to assume this supreme jurisdiction? By no means.

A union of the colonies might be projected, and an American legislature; for, if America has three millions of people, and the whole dominions, twelve millions, she ought to send a quarter part of all the members to the house of commons; and, instead of holding parliaments always at Westminister, the haughty members for Great Britain must humble themselves, one session in four, to cross the Atlantic, and hold the parliament in America.

There is no avoiding all inconveniences in human affairs. The greatest possible, or conceivable, would arise from ceding to parliament power over us without a representation in it. The next greatest would accrue from any plan that can be devised for a representation there. The least of all would arise from going on as we began, and fared well for one hundred and fifty years, by letting parliament regulate trade, and our own assemblies all other matters. . . . .

Letter VIII

That there are any who pant after "independence," (meaning by this word a new plan of government over all America, unconnected with the crown of England, or meaning by it an exemption from the power of parliament to regulate trade,) is as great a slander upon the province as ever was committed to writing. The patriots of this province desire nothing new; they wish only to keep their old privileges. They were, for one hundred and fifty years, allowed to tax themselves, and govern their internal concerns as they thought best. Parliament governed their trade as they thought fit. This plan they wish may continue forever. But it is honestly confessed, rather than become subject to the absolute authority of parliament in all cases of taxation and internal polity, they will be driven to throw off that of regulating trade. . . .

Letter XII

Thus, we see, that in every instance which can be found, the observation proves to be true, that, by the common law, the laws of England, the authority of parliament, and the limits of the realm, were confined within seas. That the kings of England had fre-

quently foreign dominions, some by conquest, some by marriage, and some by descent. But, in all those cases, the kings were either absolute in those dominions, or bound to govern them according to their own respective laws, and by their own legislative and executive councils. That the laws of England did not extend there, and the English parliament pretended no jurisdiction there, nor claimed any right to control the king in his government of those dominions. And, from this extensive survey of all the foregoing cases, there results a confirmation of what has been so often said, that there is no provision in the common law, in English government or constitution, made for the case of the colonies. It is not a conquered, but a discovered country. It came not to the king by descent, but was explored by the settlers. It came not by marriage to the king, but was purchased by the settlers of the savages. It was not granted by the king of his grace, but was dearly, very dearly earned by the planters, in the labor, blood, and treasure which they expended to subdue it to cultivation. It stands upon no grounds, then, of law or policy, but what are found in the law of nature, and their express contracts in their charters, and their implied contracts in the commissions to governors and terms of settlement.

THOMAS PAINE

COMMON SENSE [1]

1776

It remained for an Englishman who had been in the colonies little more than a year to publish the first open attack upon monarchical institutions and the first widely read plea for independence. With no admiration or affection for the government under which he had lived for thirty-seven years, he was more eager than the colonial merchants to establish a united and independent government in America. Ignorant of law, history, and all except a few generalizations in political philosophy, he aptly styled his pamphlet *Common Sense.* To him the highly complex constitutional problems which more learned men had been concerned about were irrelevant, and he successfully turned the discus-

[1] *Common Sense; Addressed to the Inhabitants of America.* . . . Philadelphia: R. Bell. 1776. [The Appendix did not appear in the first edition, but was included in editions printed within a few months, also by Bell of Philadelphia.]

sion into simpler and more emotional channels. The pamphlet was published anonymously; in some of the early editions appears the statement, "Written by an Englishman." It was at first attributed to Franklin, John Adams, or Samuel Adams.

On the Origin and Design of Government in General; with Concise Remarks on the English Constitution

[1] Some writers have so confounded society with government, as to leave little or no distinction between them; whereas they are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness *positively*, by uniting our affections, the latter *negatively*, by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last is a punisher.

Society in every state is a blessing, but Government even in its best state is but a necessary evil; in its worst state an intolerable one; for when we suffer, or are exposed to the same miseries *by a Government*, which we might expect in a country *without Government*, our calamity is heightened by reflecting that we furnish the means by which we suffer. Government, like dress, is the badge of lost innocence; the palaces of kings are built upon the ruins of the bowers of paradise. For were the impulses of conscience clear, uniform and irrestibly obeyed, man would need no other lawgiver; but that not being the case, he finds it necessary to surrender up a part of his property to furnish means for the protection of the rest; and this he is induced to do by the same prudence which in every other case advises him out of two evils to choose the least. *Wherefore*, security being the true design and end of government, it unanswerably follows, that whatever *form* thereof appears most likely to insure it to us, with the least expense and greatest benefit, is preferable to all others.

In order to gain a clear and just idea of the design and end of government, let us suppose a small number of persons settled in some sequestered part of the earth, unconnected with the rest, they will then represent the first peopling of any country, or of the world. In this state of natural liberty, society will be their first thought. A thousand motives will excite them thereto; and the strength of one man is so unequal to his wants, and his mind so unfitted for perpetual solitude, that he is soon obliged to seek assistance and

relief of another, who in his turn requires the same. Four or five united would be able to raise a tolerable dwelling in the midst of a wilderness, but *one* man might labor out the common period of life without accomplishing anything; when he had felled his timber he could not remove it, nor erect it after it was removed; hunger in the mean time would urge him from his work, and every different want would call him a different way. Disease, nay, even misfortune, would be death, for though neither might be mortal, yet either would disable him from living, and reduce him to a state in which he might rather be said to perish than to die.

Thus necessity, like a gravitating power, would soon form our newly arrived emigrants into society, the reciprocal blessings of which would supersede, and render the obligations of law and government unnecessary while they remained perfectly just to each another; but as nothing but heaven is impregnable to vice, it will unavoidably happen, that in proportion as they surmount the first difficulties of emigration, which bound them together in a common cause, they will begin to relax in their duty and attachment to each other; and this remissness will point out the necessity of establishing some form of government, to supply the defect of moral virtue.

Some convenient tree will afford them a State House, under the branches of which the whole colony may assemble to deliberate on public matters. It is more than probable that their first laws will have the title only of REGULATIONS, and be enforced by no other penalty than public disesteem. In this first parliament, every man, by natural right, will have a seat.

But as the colony increases, the public concerns will increase likewise, and the distance at which the members may be separated, will render it too inconvenient for all of them to meet on every occasion as at first, when their number was small, their habitations near, and the public concerns trifling. This will point out the convenience of their consenting to leave the legislative part to be managed by a select number chosen from the whole body, who are supposed to have the same concerns at stake which those have who appointed them, and who will act in the same manner as the whole body would were they present. If the colony continue increasing, it will become necessary to augment the number of the representatives, and that the interest of every part of the colony may be attended to, it will be found best to divide the whole into conven-

ient parts, each part sending its proper number; and that the *elected* might never form to themselves an interest separate from the *electors*, prudence will point out the propriety of having elections often; because as the *elected* might by that means return and mix again with the general body of the *electors* in a few months, their fidelity to the public will be secured by the prudent reflection of not making a rod for themselves. And as this frequent interchange will establish a common interest with every part of the community, they will mutually and naturally support each other, and on this (not on the unmeaning name of King) depends the *strength of government, and the happiness of the governed.*

Here then is the origin and rise of government; namely, a mode rendered necessary by the inability of moral virtue to govern the world; here too, is the design and end of government, *viz.* Freedom and Security. And however our eyes may be dazzled with show, or our ears deceived by sound; however prejudice may warp our wills, or interest darken our understanding, the simple voice of nature and reason will say, it is right.

I draw my idea of the form of government from a principle in nature, which no art can overturn, *viz.* that the more simple any thing is, the less liable it is to be disordered, and the easier repaired when disordered; and with this maxim in view, I offer a few remarks on the so much boasted constitution of England. That it was noble for the dark and slavish times in which it was erected, is granted. When the world was overrun with tyranny, the least remove therefrom was a glorious rescue. But that it is imperfect, subject to convulsions, and incapable of producing what it seems to promise, is easily demonstrated.

Absolute governments, (tho' the disgrace of human nature) have this advantage with them, that they are simple; if the people suffer, they know the head from which their suffering springs, know likewise the remedy, and are not bewildered by a variety of causes and cures. But the constitution of England is so exceedingly complex, that the nation may suffer for years together without being able to discover in which part the fault lies; some will say in one and some in another, and every political physician will advise a different medicine.

I know it is difficult to get over local or long standing prejudices, yet if we will suffer ourselves to examine the component parts of the English constitution, we shall find them to be the base

remains of two ancient tyrannies, compounded with some new Republican materials.

First.—The remains of Monarchical tyranny in the person of the King.

Secondly.—The remains of Aristocratical tyranny in the person of the Peers.

Thirdly.—The new Republican materials, in the persons of the Commons, on whose virtue depends the freedom of England.

The two first, by being hereditary, are independent of the People; wherefore in a *constitutional sense* they contribute nothing towards the freedom of the State.

To say that the constitution of England is a *union* of three powers, reciprocally *checking* each other, is farcical; either the words have no meaning, or they are flat contradictions.

To say that the Commons is a check upon the King, presupposes two things:

First.—That the King is not to be trusted without being looked after; or in other words, that a thirst for absolute power is the natural disease of Monarchy.

Secondly.—That the Commons, by being appointed for that purpose, are either wiser or more worthy of confidence than the Crown.

But as the same constitution which gives the Commons a power to check the King by withholding the supplies, gives afterwards the King a power to check the Commons, by empowering him to reject their other bills; it again supposes that the King is wiser than those whom it has already supposed to be wiser than him. A mere absurdity!

There is something exceedingly ridiculous in the composition of Monarchy; it first excludes a man from the means of information, yet empowers him to act in cases where the highest judgment is required.—The state of a king shuts him from the world, yet the business of a King requires him to know it thoroughly; wherefore the different parts by unnaturally opposing and destroying each other, prove the whole character to be absurd and useless.

Some writers have explained the English constitution thus; the King, say they, is one, the People another; the Peers are an house in behalf of the King: the Commons in behalf of the People; but this hath all the distinctions of an house divided against itself: and though the expressions be pleasantly arranged, yet when examined they appear idle and ambiguous; and it will always

happen, that the nicest construction that words are capable of, when applied to the description of something which either cannot exist, or is too incomprehensible to be within the compass of description, will be words of sound only, and though they may amuse the ear, they cannot inform the mind, for this explanation includes a previous question, *viz. How came the King by a power which the People are afraid to trust, and always obliged to check?* Such a power could not be the gift of a wise People, neither can any power *which needs checking*, be from God: yet the provision, which the constitution makes, supposes such a power to exist.

But the provision is unequal to the task; the means either cannot or will not accomplish the end, and the whole affair is a *Felo de se;* for as the greater weight will always carry up the less, and as all the wheels of a machine are put in motion by one, it only remains to know which power in the constitution has the most weight, for that will govern; and though the others, or a part of them, may clog, or as the phrase is, check the rapidity of its motion, yet so long as they cannot stop it, their endeavors will be ineffectual; the first moving power will at last have its way, and what it wants in speed is supplied by time.

That the crown is this overbearing part in the English constitution needs not be mentioned, and that it derives its whole consequence merely from being the giver of places and pensions is self-evident; wherefore, though we have been wise enough to shut and lock a door against absolute Monarchy, we at the same time have been foolish enough to have put the crown in possession of the key.

The prejudice of Englishmen, in favor of their own government by King, Lords, and Commons, arises as much or more from national pride than reason. Individuals are undoubtedly safer in England than in some other countries, but the *will* of the King is as much the *law* of the land in Britain as in France, with this difference, that instead of proceeding directly from his mouth, it is handed to the people under the formidable shape of an act of parliament. For the fate of Charles I. hath only made Kings more subtle—not more just.

Wherefore, laying aside all national pride and prejudice in favor of modes and forms, the plain truth is, that *it is wholly owing to the constitution of the People, and not the constitution of the Government,* that the crown is not as oppressive in England as in Turkey.

An inquiry into the *constitutional errors* in the English form of government is at this time highly necessary; for as we are never in a proper condition of doing justice to others, while we continue under the influence of some leading partiality, so neither are we capable of doing it to ourselves while we remain fettered by an obstinate prejudice. And as a man who is attached to a prostitute is unfitted to choose or judge of a wife, so any preposession in favor of a rotten constitution of government will disable us from discerning a good one.

Of Monarchy and Hereditary Succession

Mankind being originally equals in the order of creation, the equality could only be destroyed by some subsequent circumstance; the distinctions of rich and poor, may in a great measure be accounted for, and that without having recourse to the harsh, ill-sounding names of avarice and oppression. Oppression is often the *consequence*, but seldom or never the *means* of riches; and though avarice will preserve a man from being necessitously poor, it generally makes him too timorous to be wealthy.

But there is another and greater distinction, for which no truly natural or religious reason can be assigned, and that is, the distinction of men into KINGS and SUBJECTS. Male and female are the distinctions of nature; good and bad the distinctions of heaven; but how a race of men came into the world so exalted above the rest, and distinguished like some new species, is worth inquiring into, and whether they are the means of happiness or of misery to mankind.

In the early ages of the World, according to the Scripture chronology, there were no Kings; the consequence of which was there were no wars; it is the pride of Kings which throws mankind into confusion. Holland without a King hath enjoyed more peace for this last century than any of the monarchical governments of Europe. Antiquity favors the same remark; for the quiet and rural lives of the first patriarchs hath a happy something in them, which vanishes when we come to the history of Jewish royalty.

Government by kings was first introduced into the world by the Heathen, from whom the children of Israel copied the custom. It was the most prosperous invention the Devil ever set on foot for the promotion of idolatry. The heathen paid divine honors to their

deceased kings, and the Christian world hath improved on the plan by doing the same to their living ones. How impious is the title of sacred Majesty, applied to a worm, who in the midst of his splendor is crumpling into dust!

As the exalting one man so greatly above the rest, cannot be justified on the equal rights of nature, so neither can it be defended on the authority of scripture; for the will of the Almighty, as declared by Gideon and the prophet Samuel, expressly disapproves of government by Kings. . . .

[20] To the evil of monarchy we have added that of hereditary succession; and as the first is a degradation and lessening of ourselves, so the second, claimed as a matter of right, is an insult and imposition on posterity. For all men being originally equals, no *one* by *birth*, could have a right to set up his own family, in perpetual preference to all others for ever, and though himself might deserve *some* degree of honors of his contemporaries, yet his descendants might be far too unworthy to inherit them. One of the strongest *natural* proofs of the folly of hereditary right in kings, is, that nature disapproves it, otherwise she would not so frequently turn it into ridicule, by giving mankind an *Ass for a Lion*.

Secondly, as no man at first could possess more public honors than were bestowed upon him, so the givers of those honors could have no power to give away the right of posterity, and though they might say, "We choose you for *our* head," they could not without manifest injustice to their children, say, that "your children and your children's children shall reign over ours for ever." Because such an unwise, unjust, unnatural compact might (perhaps) in the next succession put them under the government of a rogue or a fool. Most wise men in their private sentiments, have ever treated hereditary right with contempt; yet it is one of those evils, which when once established is not easily removed; many submit from fear, others from superstition, and the more powerful part shares with the king, the plunder of the rest.

This is supposing the present race of kings in the world to have had an honorable origin; whereas it is more than probable, that, could we take off the dark covering of antiquity, and trace them to their first rise, we should find the first of them nothing better than the principal ruffian of some restless gang, whose savage manners, or pre-eminence in subtlety obtained him the title of chief among plunderers; and who by increasing in power, and extending

his depredations, overawed the quiet and defenceless to purchase their safety by frequent contributions. Yet his electors could have no idea of giving hereditary right to his descendants, because such a perpetual exclusion of themselves was incompatible with the free and unrestrained principles they professed to live by. Wherefore, hereditary succession in the early ages of monarchy could not take place as a matter of claim, but as something casual or complimental; but as few or no records were extant in those days, and traditionary history stuffed with fables, it was very easy, after the lapse of a few generations, to trump up some superstitious tale, conveniently timed, Mahomet like, to cram hereditary right down the throats of the vulgar. Perhaps the disorders which threatened, or seemed to threaten, on the decease of a leader and the choice of a new one (for elections among ruffians could not be very orderly) induced many at first to favor hereditary pretensions; by which means it happened, as it hath happened since, that what at first was submitted to as a convenience, was afterwards claimed as a right.

England, since the conquest, hath known some few good monarchs, but groaned beneath a much larger number of bad ones; yet no man in his senses can say that their claim under William the Conqueror is a very honorable one. A French bastard, landing with an armed Banditti, and establishing himself king of England against the consent of the natives, is, in plain terms, a very paltry, rascally original. It certainly hath no divinity in it. However, it is needless to spend much time in exposing the folly of hereditary right; if there are any so weak as to believe it, let them promiscously worship the Ass and the Lion, and welcome. I shall neither copy their humility, nor disturb their devotion.

Yet I should be glad to ask, how they suppose kings came at first? The question admits of three answers, *viz.* either by lot, by election, or by usurpation. If the first king was taken by lot, it establishes a precedent for the next, which excludes hereditary succession. Saul was by lot, yet the succession was not hereditary, neither does it appear from that transaction that there was any intention it ever should. If the first king of any country was by election, that likewise establishes a precedent for the next; for to say, that the right of all future generations is taken away, by the act of the first electors, in their choice not only of a king, but of a family of kings for ever, hath no parallel in or out of scripture but

the doctrine of original sin, which supposes the free will of all men lost in Adam; and from such comparison, and it will admit of no other, hereditary succession can derive no glory. For as in Adam all sinned, and as in the first electors all men obeyed; as in the one all mankind were subjected to satan, and in the other to sovereignty; as our innocence was lost in the first, and our authority in the last; and as both disable us from re-assuming some former state and privilege, it unanswerably follows, that original sin and hereditary succession are parallels. Dishonorable rank! Inglorious connexion! Yet the most subtle sophist cannot produce a juster simile.

As to usurpation, no man will be so hardy as to defend it; and that William the Conqueror was an usurper is a fact not to be contradicted. The plain truth is, that the antiquity of English monarchy will not bear looking into.

But it is not so much the absurdity as the evil of hereditary succession which concerns mankind. Did it ensure a race of good and wise men, it would have the seal of divine authority, but as it opens a door to the *foolish*, the *wicked*, and the *improper*, it hath in it the nature of oppression. . . . .

[28] In England a King hath little more to do than to make war and give away places; which, in plain terms, is to impoverish the nation and set it together by the ears. A pretty business indeed for man to be allowed eight hundred thousand sterling a year for, and worshipped into the bargain! Of more worth is one honest man to society, and in the sight of God, than all the crowned ruffians that ever lived.

Thoughts on the Present State of American Affairs

In the following pages I offer nothing more than simple facts, plain arguments, and common sense; and have no other preliminaries to settle with the reader, than that he will divest himself of prejudice and prepossession, and suffer his reason and his feelings to determine for themselves; that he will put *on*, or rather that he will not put *off*, the true character of a man, and generously enlarge his views beyond the present day.

Volumes have been written on the subject of the struggle between England and America. Men of all ranks have embarked in the controversy, from different motives, and with various designs: but all have been ineffectual, and period of debate is closed.

Arms, as the last resource, must decide the contest; the appeal was the choice of the king, and the continent hath accepted the challenge.

It has been reported of the late Mr. Pelham (who, tho' an able minister, was not without his faults) that on his being attacked in the house of commons, on the score that his measures were only of a temporary kind, replied, "*they will last my time.*" Should a thought so fatal and unmanly possess the Colonies in the present contest, the name of ancestors will be remembered by future generations with detestation.

The Sun never shined on a cause of greater worth. 'Tis not the affair of a City, a Province, or a Kingdom, but of a Continent—of at least one eighth part of the habitable Globe. 'Tis not the concern of a day, a year, or an age; posterity are virtually involved in the contest, and will be more or less affected, even to the end of time, by the proceedings now. Now is the seed-time of Continental union, faith, and honor. The least fracture now will be like a name engraved with the point of a pin on the tender rind of a young oak; the wound will enlarge with the tree, and posterity read it in full grown characters.

By referring the matter from argument to arms, a new era for politics is struck; a new method of thinking hath arisen. All plans, proposals, &c. prior to the nineteenth of April, *i.e.* to the commencement of hostilities, are like the almanacks of last year; which, though proper then, are superseded and useless now. Whatever was advanced by the advocates on either side of the question then, terminated in one and the same point, *viz.* a union with Great Britain; the only difference between the parties was the method of effecting it; the one proposing force, the other friendship; but it hath so far happened that the first has failed, and the second has withdrawn her influence.

As much hath been said of the advantages of reconciliation, which, like an agreeable dream, hath passed away and left us as we were, it is but right, that we should examine the contrary side of the argument, and inquire into some of the many material injuries which these colonies sustain, and always will sustain, by being connected with and dependent on Great-Britain. To examine that connexion and dependance, on the principles of nature and common sense; to see what we have to trust to, if separated, and what we are to expect, if dependant.

I have heard it asserted by some, that as America hath flour-

ished under her former connexion with Great-Britain, the same connexion is necessary towards her future happiness; and will always have the same effect. Nothing can be more fallacious than this kind of argument. We may as well assert that because a child has thrived upon milk, that it is never to have meat, or that the first twenty years of our lives is to become a precedent for the next twenty. But even this is admitting more than is true, for I answer roundly, that America would have flourished as much, and probably much more, had no European power had any thing to do with her. The commerce, by which she hath enriched herself, are the necessaries of life, and will always have a market while eating is the custom of Europe.

But she has protected us, say some. That she hath engrossed us is true, and defended the continent at our expense as well as her own, is admitted, and she would have defended Turky from the same motives, *viz.* for the sake of trade and dominion.

Alas! we have been too long led away by ancient prejudices, and made large sacrifices to superstition. We have boasted the protection of Great Britain, without considering, that her motive was *interest* not *attachment;* and that she did not protect us from *our enemies* on *our account*, but from *her enemies* on *her own account*, from those who had no quarrel with us on any *other account*, and who will always be our enemies on the *same account.* Let Britain waive her pretensions to the continent, or the continent throw off the dependance, and we should be at peace with France and Spain, were they at war with Britain. The miseries of Hanover last war ought to warn us against connexion.

It hath lately been asserted in parliament, that the colonies have no relation to each other but through the Parent Country, *i.e.* that Pennsylvania and the Jerseys, and so one for the rest, are sister colonies by the way of England; this is certainly a very roundabout way of proving relationship, if I may so call it. France and Spain never were, nor perhaps ever will be, our enemies as *Americans*, but as our being *subjects of Great Britain.*

But Britain is the parent country, say some. Then the more shame upon her conduct. Even brutes do not devour their young, nor savages make war upon their families; wherefore, the assertion, if true, turns to her reproach; but it happens not to be true, or only partly so, and the phrase *parent* or *mother country* hath been jesuitically adopted by the King and his parasites, with a low

papistical design of gaining an unfair bias on the credulous weakness of our minds. Europe, and not England, is the parent country of America. This new World hath been the asylum for the persecuted lovers of civil and religious liberty from *every part* of Europe. Hither have they fled, not from the tender embraces of the mother, but from the cruelty of the monster; and it is so far true of England, that the same tyranny which drove the first emigrants from home, pursues their descendants still. . . .

[58] A government of our own is our natural right: and when a man seriously reflects on the precariousness of human affairs, he will become convinced, that it is infinitely wiser and safer, to form a constitution of our own in a cool deliberate manner, while we have it in our power, than to trust such an interesting event to time and chance. If we omit it now, some Massenello may hereafter arise, who, laying hold of popular disquietudes, may collect together the desperate and the discontented, and by assuming to themselves the powers of government, finally sweep away the liberties of the continent like a deluge. Should the government of America return again into the hands of Britain, the tottering situation of things, will be a temptation for some desperate adventurer to try his fortune; and in such a case, what relief can Britain give? Ere she could hear the news, the fatal business might be done; and ourselves suffering like the wretched Britons under the oppression of the Conqueror. Ye that oppose independence now, ye know not what ye do; ye are opening a door to eternal tyranny, by keeping vacant the seat of government. There are thousands and tens of thousands, who would think it glorious to expel from the Continent, that barbarous and hellish power, which hath stirred up the Indians and Negroes to destroy us,—the cruelty hath a double guilt, it is dealing brutally by us, and treacherously by them.

To talk of friendship with those in whom our reason forbids us to have faith, and our affections, wounded through a thousand pores, instruct us to detest, is madness and folly. Every day wears out the little remains of kindred between us and them; and can there be any reason to hope, that as the relationship expires, the affection will increase, or that we shall agree better, when we have ten times more and greater concerns to quarrel over than ever?

Ye that tell us of harmony and reconciliation, can ye restore to us the time that is past? Can ye give to prostitution its former innocence? Neither can ye reconcile Britain and America. The last

cord now is broken, the people of England are presenting addresses against us. There are injuries which nature cannot forgive; she would cease to be nature if she did. As well can the lover forgive the ravisher of his mistress, as the Continent forgive the murders of Britain. The Almighty hath implanted in us these unextinguishable feelings, for good and wise purposes. They are the guardians of his image in our hearts, and distinguish us from the herd of common animals. The social compact would dissolve, and justice be extirpated from the earth, or have only a casual existence were we callous to the touches of affection. The robber, and the murderer, would often escape unpunished, did not the injuries which our tempers sustain, provoke us into justice.

O! ye that love mankind! Ye that dare oppose, not only the tyranny, but the tyrant, stand forth! Every spot of the old world is overrun with oppression. Freedom hath been hunted round the globe. Asia, and Africa, have long expelled her—Europe regards her like a stranger, and England hath given her warning to depart. O! receive the fugitive, and prepare in time an asylum for mankind. . . .

Appendix

I proceed now to the second head, viz. Which is the easiest and most practicable plan, RECONCILIATION or INDEPENDENCE? with some occasional remarks.

He who takes nature for his guide is not easily beaten out of his argument, and on that ground, I answer generally *That independence being a single simple line, contained within ourselves; and Reconciliation, a matter exceedingly perplexed and complicated, and in which a treacherous, capricious court is to interfere, gives the answer without a doubt.*

The present state of America is truly alarming to every man who is capable of reflection. Without law, without government, without any other mode of power than what is founded on, and granted by, courtesy. Held together by an unexampled concurrence of sentiment, which is nevertheless subject to change, and which every secret enemy is endeavoring to dissolve. Our present condition is, Legislation without law; wisdom without a plan; a constitution without a name; and, what is strangely astonishing, perfect independence contending for dependence. The instance is without a precedent; the case never existed before; and who can tell what may

be the event? The property of no man is secure in the present unbraced system of things. . . .

Notwithstanding our wisdom, there is a visible feebleness in some of our proceedings which gives encouragement to dissentions. The Continental Belt is too loosely buckled. And if something is not done in time, it will be too late to do any thing, and we shall fall into a state, in which neither *Reconciliation*, nor *Independence* will be practicable. . . .

In short, independence is the only *Bond* that can tye and keep us together. We shall then see our object, and our ears will be legally shut against the schemes of an intriguing, as well as a cruel, enemy. We shall then, too, be on a proper footing to treat with Britain; for there is reason to conclude, that the pride of that court, will be less hurt by treating with the American states for terms of peace, than with those, whom she denominates "rebellious subjects," for terms of accomodation. . . .

On these grounds I rest the matter. And as no offer hath yet been made to refute the doctrine contained in the former editions of this pamphlet, it is a negative proof, that either the doctrine cannot be refuted, or, that the party in favor of it are too numerous to be opposed. WHEREFORE, instead of gazing at each other, with suspicious or doubtful curiosity, let each of us, hold out to his neighbor the hearty hand of friendship, and unite in drawing a line, which, like an act of oblivion, shall bury in forgetfulness every former dissention. Let the names of whig and tory be extinct; and let none other be heard among us, than those of *a good citizen; an open and resolute friend; and a virtuous supporter of the rights of mankind, and of the free and independent states of America.*

THE DECLARATION OF INDEPENDENCE [1]

In Congress, July 4, 1776

On June 7, 1776, Richard Henry Lee of Virginia introduced three resolutions, the first of which declared the colonies to be independent of Great Britain. The resolutions were seconded by John Adams and on the 10th a committee, consisting of Jefferson, Franklin, Adams, Livingstone, and Sherman,

[1] *Revised Statutes of the United States*. 1878, pp. 3–6.

was appointed to "prepare a declaration to the effect of the said first resolution." On the 28th the committee brought in a draft of a declaration of independence. The resolution submitted by Lee was adopted on July 2; the Declaration of Independence was adopted by the Congress and signed by its president, John Hancock, on July 4th.

The unanimous Declaration of the thirteen united States of America

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us not of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our Sacred Honor.

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CHAPTER III

STATE CONSTITUTION MAKING DURING THE REVOLUTION

INTRODUCTION

The modern age of the written constitution begins with the American Revolution. Before that there had been a number of experiments with such documents but none of them had been of lasting importance or influence. Oddly enough, the only great state which had experimented with a written constitution was England, the only world power which is today without a written constitution. And certainly the Instrument of Government, in effect for a few months during the period of the Commonwealth, had little more influence outside England than it had upon the institutions of that country. The real ancestor of the written constitution is the American colonial charter, together with such variations of the charter as the Fundamental Orders of Connecticut, the Fundamental Articles of New Haven and Penn's Frame of Government. Although the charters themselves were, in a legal, and usually an actual sense imposed from above and always subject to being rescinded without the consent of the colonists, they accustomed the colonists to written frames of government. Furthermore, the schemes of government provided for in the charters were the natural starting points from which the Americans began to develop their own forms of government when civil war became revolution.

During the Revolution each of the states, except Rhode Island and Connecticut which continued to use their seventeenth century charters with a few slight changes, framed and adopted at least one constitution. With the exception of the Massachusetts constitution and the second New Hampshire constitution these were not submitted to the

voters of the state for ratification but were drawn up and adopted by the legislatures, congresses, or conventions in the states. The transition from government under the authority of Great Britain to independent statehood under a written constitution was carried on by a temporary government with the popularly elected house of the legislature, or a specially elected assembly at the head of it. The first definite step in the direction of establishing a constitutional basis for the government was taken by New Hampshire on January 5, 1776, when a convention in that state adopted a written frame of government. This was, however, only a first step, for the document was proclaimed to be of a temporary nature and it expressly states that New Hampshire has no desire for independence. It was superseded in 1784 by a popularly ratified constitution, which in turn was replaced by another document in 1792. On March 26 the "Provincial Congress" of South Carolina adopted a frame of government which is considerably nearer to being a constitution than was that of New Hampshire, even though it does speak of the "civil war" now existing, and of being in effect "until an accomodation of the differences between Great Britain and America shall take place." Another instrument was adopted by the assembly in 1778, and a third by a convention in 1790.

The resolution adopted by the Continental Congress on May 10, 1776 recommending that the "respective Assemblies and Conventions of the United Colonies" establish governments adequate to their needs, and the preamble voted on May 15 declaring the colonies independent of British authority met with surprisingly prompt response by the several states. First of them was Virginia, whose convention had voted unanimously on May 15 to prepare and adopt a permanent constitution. On June 12 the Declaration of Rights was agreed to and on June 29 the frame of government was accepted by the convention. It was in effect until 1830. The New Jersey convention met on May 26 and adopted a constitution on July 3. This document, which was not superseded until 1844, follows the same plan as that

of Virginia. Delaware's constitution of September 2 is unusual in that it indicates a tendency toward recognising a marked difference between ordinary and fundamental or constitutional law. Part of the instrument is declared to be unalterable; the remainder to be changed only by a five-sevenths vote in the legislature. It was supplanted in 1792. The Pennsylvania constitution of September 28 was carefully drafted, and contained several unusual features, notably a plural executive, a unicameral legislature, and a council of censors, but these features have not been of lasting importance. It was superseded in 1790. The convention in Maryland adopted a constitution on November 11 which endured until 1851. It contained the longest bill of rights in any constitution before 1780 and the most careful provision for amendment of any thus far adopted. In North Carolina the convention agreed to a constitution on December 18. It was quite similar to that of Virginia and was in effect until 1861.

During the next year, 1777, constitutions were adopted by the conventions in Georgia and New York. That of Georgia contained the first provision for direct participation of the people in the amending process, in that a convention for adopting amendments to the constitution could be called only after a majority of the voters in a majority of the counties had so petitioned. It was superseded in 1789 by a constitution which was in effect until 1798. The New York constitution, which lasted until 1821, contained no bill of rights, but it was the first to provide for the popular election of its governor. All of the preceding constitutions, except that of Pennsylvania, had called for election of the executive by the legislature. In Pennsylvania, the Executive Council was elected by the people, the President of the Council was elected by joint vote of the Assembly and Council from the membership of the latter.

In Massachusetts a temporary framework was agreed to in 1776. In 1778 the convention called to frame a constitution submitted one to the voters of the state, the first instance of popular ratification, or rather of popular rejection, for this

document was defeated and another was framed and accepted by the voters in 1780. It is the only constitution adopted during the Revolutionary period which is still in effect. By far the longest and most carefully drafted of its time, it represents the culmination of four years of experience in the framing of constitutions. In the method of its preparation and ratification, the elaborate bill of rights, the bicameral legislature, the popularly elected single executive, the relatively strict separation of powers between legislature, executive, and judiciary, the detailed provisions for the exercise of powers granted to these departments, it includes many of the principles which have long since become accepted as fundamental parts of the constitutional system in both state and national government.

VIRGINIA DECLARATION OF RIGHTS [1]

June 12, 1776

First of the Revolutionary constitutions intended to be permanent, that of Virginia was a model for many adopted subsequently. Particularly is this true of the declaration or bill of rights which was drafted by George Mason, a wealthy planter, who also wrote a considerable part of the frame of government. The political system was something of a compromise between those desiring a very democratic scheme and those desiring a strong governor and a senate elected for very long terms or for life.

AT A GENERAL CONVENTION of Delegates and representatives, from the several counties and corporations of Virginia, held at the Capitol in the City of Williamsburg on Monday the 6th May 1776.

A Declaration of Rights made by the representatives of the good people of Virginia, assembled in full and free Convention; which rights do pertain to them and their posterity, as the basis and foundation of government.

[1] *Statutes at Large of Virginia*, ed. Hening. Richmond: J. and G. Cochran. 1821. Pp. 109 ff.

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

3. That government is, or ought to be instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.

4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of publick services; which, not being descendible, neither ought the offices of magistrate, legislator or judge to be hereditary.

5. That the legislative and executive powers of the state should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members to be again eligible or ineligible, as the laws shall direct.

6. That elections of members to serve as representatives of the people in assembly, ought to be free; and that all men having sufficient evidence of permanent common interest with, and attachment to the community, have the right of suffrage, and cannot be taxed or deprived of their property for publick uses, without their own consent, or that of their representatives, so elected, nor bound by any law to which they have not, in like manner, assented for the public good.

7. That all power of suspending laws, or the execution of laws, by any authority without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

8. That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favour, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotick governments.

13. That a well-regulated militia, composed of the body of the people trained to arms, is the proper, natural and safe defence of a free state; that standing armies in time of peace should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

14. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of the government of Virginia, ought to be erected or established within the limits thereof.

15. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men

are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

THE CONSTITUTION OF VIRGINIA [1]

June 29, 1776

The Constitution, or Form of Government, agreed to and resolved upon by the Delegates and Representatives of the several counties and corporations of Virginia.

WHEREAS George the third [a summary of the Declaration of Independence follows] . . . By which several acts of misrule, the government of this country, as formerly exercised under the crown of Great Britain, is TOTALLY DISSOLVED.

WE, the Delegates and Representatives of the good people of Virginia, having maturely considered the premises, and viewing with great concern the deplorable conditions to which this once happy country must be reduced, unless some regular adequate mode of civil polity is speedily adopted, and in compliance with a recommendation of the General Congress, do ordain and declare the future form of government of Virginia to be as followeth:

The legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other: nor shall any person exercise the powers of more than one of them at the same time; except that the justices of the county courts shall be eligible to either House of Assembly.

The legislative shall be formed of two distinct branches, who, together, shall be a complete Legislature. They shall meet once, or oftener, every year, and shall be called the GENERAL ASSEMBLY OF VIRGINIA.

One of these shall be called the HOUSE OF DELEGATES, and consist of two representatives, to be chosen for each county, and for the district of West-Augusta, annually, of such men as

[1] *Statutes at Large of Virginia*, pp. 112 ff.

actually reside in, and are freeholders of the same, or duly qualified according to law, and also of one delegate or representative to be chosen annually for the city of Williamsburg, and one for the borough of Norfolk, and a representative for each of such other cities and boroughs, as may hereafter be allowed particular representation by the legislature; but when any city or borough shall so decrease as that the number of persons having right of suffrage therein shall have been for the space of seven years successively less than half the number of voters in some one county in Virginia, such city or borough thenceforward shall cease to send a delegate or representative to the Assembly.

The other shall be called the SENATE, and consist of twenty-four members, of whom thirteen shall constitute a House to proceed on business; for whose election the different counties shall be divided into twenty-four districts, and each county of the respective district, at the time of the election of its delegates, shall vote for one Senator, who is actually a resident and freeholder within the district, or duly qualified according to law, and is upwards of twenty-five years of age; and the Sheriffs of each county, within five days at farthest after the last county election in the district, shall meet at some convenient place, and from the poll so taken in their respective counties return as a Senator the man who shall have the greatest number of votes in the whole district. To keep up this Assembly by rotation, the districts shall be equally divided into four classes and numbered by lot. At the end of one year after the general election, the six members elected by the first division shall be displaced, and the vacancies thereby occasioned supplied from such class or division, by new election, in the manner aforesaid. This rotation shall be applied to each division, according to its number, and continued in due order annually.

The right of suffrage in the election of members for both Houses shall remain as exercised at present, and each House shall choose its own speaker, appoint its own officers, settle its own rules of proceedings, and direct writs of election, for the supplying intermediate vacancies.

All laws shall originate in the House of Delegates, to be approved or rejected by the Senate, or to be amended with consent of the House of Delegates; except money bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.

A Governour, or chief magistrate, shall be chosen annually, by joint ballot of both Houses to be taken in each House respectively, deposited in the conference room, the boxes examined jointly by a committee of each House, and the numbers severally reported to them, that the appointments may be entered (which shall be the mode of taking the joint ballot of both Houses, in all cases) who shall not continue in that office longer than three years successively, nor be eligible until the expiration of four years after he shall have been out of that office. An adequate, but moderate salary shall be settled on him, during his continuance in office; and he shall, with the advice of a Council of State, exercise the executive powers of government according, to the laws of this Commonwealth; and shall not, under any pretense, exercise any power or prerogative by virtue of any law, statute or custom of England. But he shall, with the advice of the Council of State, have the power of granting reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; in which cases, no reprieve or pardon shall be granted, but by resolve of the House of Delegates.

Either House of the General Assembly may adjourn themselves respectively. The Governour shall not prorogue or adjourn the Assembly during their sitting, nor dissolve them at any time; but he shall, if necessary, either by advice of the Council of State, or on application of a majority of the House of Delegates, call them before the time to which they shall stand prorogued or adjourned.

A Privy Council, or Council of State, consisting of eight members, shall be chosen by joint ballot of both Houses of Assembly, either from their own members or the people at large, to assist in the administration of government. They shall annually choose, out of their own members, a president, who, in case of death, inability, or absence of the Governour from the government, shall act as Lieutenant-Governour. Four members shall be sufficient to act, and their advice and proceedings shall be entered on record, and signed by the members present (to any part whereof, any member may enter his dissent) to be laid before the General Assembly, when called for by them. This Council may appoint their own clerk, who shall have a salary settled by law, and take an oath of secrecy in such matters as he shall be directed by the board to conceal. A sum of money appropriated to that purpose shall be

divided annually among the members, in proportion to their attendance; and they shall be incapable, during their continuance in office, of sitting in either House of Assembly. Two members shall be removed, by joint ballot of both Houses of Assembly, at the end of every three years, and be ineligible for the three next years. These vacancies, as well as those occasioned by death or incapacity, shall be supplied by new elections, in the same manner.

The Delegates for Virginia to the Continental Congress shall be chosen annually, or superseded in the meantime by joint ballot of both Houses of Assembly.

The present militia officers shall be continued, and vacancies supplied by appointment of the Governour, with the advice of the Privy Council, on recommendations from the respective county courts; but the Governour and Council shall have a power of suspending any officer, and ordering a court-martial, on complaint of misbehaviour or inability, or to supply vacancies of officers, happening when in actual service. The Governour may embody the militia, with the advice of the Privy Council; and when embodied, shall alone have the direction of the militia, under the laws of the country.

The two Houses of Assembly shall, by joint ballot, appoint Judges of the Supreme Court of Appeals, and General Court, Judges in Chancery, Judges of Admiralty, Secretary, and the Attorney-General, to be commissioned by the Governour, and continue in office during good behaviour. In case of death, incapacity, or resignation, the Governour, with the advice of the Privy Council, shall appoint persons to succeed in office, to be approved or displaced by both Houses. These officers shall have fixed and adequate salaries, and, together with all others holding lucrative offices, and all ministers of the Gospel of every denomination, be incapable of being elected members of either House of Assembly or the Privy Council.

The Governour, with the advice of the Privy Council, shall appoint Justices of the Peace for the counties; and in case of vacancies, or a necessity of increasing the number hereafter, such appointments to be made upon the recommendation of the respective county courts. The present acting Secretary in Virginia, and clerks of all the county courts, shall continue in office. In cases of vacancies, either by death, incapacity, or resignation, a Secretary shall be appointed as before directed, and the clerks by the respective

courts. The present and future clerks shall hold their offices during good behaviour, to be judged of and determined in the General Court. The sheriffs and coroners shall be nominated by the respective courts, approved by the Governour, with the advice of the Privy Council, and commissioned by the Governour. The Justices shall appoint Constables; and all fees of the aforesaid officers be regulated by law.

The Governour, when he is out of office, and others offending against the State, either by mal-administration, corruption, or other means by which the safety of the State may be endangered, shall be impeachable by the House of Delegates. Such impeachment to be prosecuted by the Attorney-General, or such other person or persons as the House may appoint in the General Court, according to the laws of the land. If found guilty, he or they shall be either forever disabled to hold any office under government, or be removed from such office *pro tempore*, or subjected to such pains or penalties as the law shall direct.

If all or any of the Judges of the General Court should on good grounds (to be judged of by the House of Delegates) be accused of any of the crimes or offences before mentioned, such House of Delegates may, in like manner, impeach the Judge or Judges so accused, to be prosecuted in the Court of Appeals; and he or they, if found guilty, shall be punished in the same manner as is prescribed in the preceding clause.

Commissions and grants shall run, *In the name of the* COMMONWEALTH *of* VIRGINIA, and bear test by the Governour, with the seal of the Commonwealth annexed. Writs shall run in the same manner, and bear test by the clerks of the several courts. Indictments shall conclude, *Against the peace and dignity of the Commonwealth.*

A Treasurer shall be appointed annually, by joint ballot of both Houses.

All escheats, penalties, and forfeitures, heretofore going to the King, shall go to the Commonwealth, save only such as the Legislature may abolish, or otherwise provide for.

The territories, contained within the Charters, erecting the Colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed, to the people of these Colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever,

which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Potowmack and Pokomoke, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been, or shall be made thereon. The western and northern extent of Virginia shall in all other respects, stand as fixed by the Charter of King James the First in the year one thousand six hundred and nine, and by the publick treaty of peace between the courts of Britain and France, in the year one thousand seven hundred and sixty-three; unless by act of this legislature, one or more governments be established westward of the Allegheny mountains. And no purchases of lands shall be made of the Indian natives, but on behalf of the publick, by authority of the General Assembly.

In order to introduce this government, the representatives of the people met in Convention shall choose a Governour and Privy Council, also such other officers directed to be chosen by both Houses as may be judged necessary to be immediately appointed. The Senate to be first chosen by the people to continue until the last day of March next, and the other officers until the end of the succeeding session of Assembly. In cases of vacancies, the speaker of either House shall issue writs for new elections.

THEOPHILUS PARSONS AND OTHERS [1]

THE ESSEX RESULT

1778

The Result of the Convention of Delegates holden at Ipswich in the County of Essex . . . was occasioned by the submission to the voters of Massachusetts of the proposed constitution of 1778. The delegates from the towns of Essex county who met in Newburyport in April, 1778, after reading and discussing the proposed instrument, voted a set of resolutions in opposition to it, giving as their main reasons for disapproval the lack of a bill of rights, the insufficient separation of powers, and the absence of a property qualification for the gov-

[1] The *Result* was first published in Newburyport, Massachusetts, in 1778. It is reprinted in *Memoir of Theophilus Parsons*, by his son, Theophilus Parsons. Boston: Ticknor and Fields. 1859. Appendix, I, pp. 362–74.

ernorship. A committee, of which Theophilus Parsons, later chief justice of his state, was the leading member, was appointed to set forth these objections at length and to state the principles of a sound government. The report of that committee was accepted by the convention, now meeting at Ipswich, on April 12, 1778.

The reason and understanding of mankind, as well as the experience of all ages, confirm the truth of this proposition, that the benefits resulting to individuals from a free government, conduce much more to their happiness, than the retaining of all their natural rights in a state of nature. These benefits are greater or less, as the form of government, and the mode of exercising the supreme power of the State, are more or less conformable to those principles of equal impartial liberty, which is the property of all men from their birth as the gift of their Creator, compared with the manners and genius of the people, their occupations, customs, modes of thinking, situation, extent of country, and numbers. If the constitution and form of government are wholly repugnant to those principles, wretched are the subjects of that State. They have surrendered a portion of their natural rights, the enjoyment of which was in some degree a blessing, and the consequence is, they find themselves stripped of the remainder. As an anodyne to compose the spirits of these slaves, and to lull them into a passively obedient state, they are told, that tyranny is preferable to no government at all; a proposition which is to be doubted, unless considered under some limitation. Surely a state of nature is more excellent than that, in which men are meanly submissive to the haughty will of an imperious tyrant, whose savage passions are not bounded by the laws of reason, religion, honor, or a regard to his subjects, and the point to which all his movements center, is the gratification of a brutal appetite. As in a state of nature much happiness cannot be enjoyed by individuals, so it has been conformable to the inclinations of almost all men, to enter into a political society so constituted, as to remove the inconveniences they were obliged to submit to in their former state, and, at the same time, to retain all those natural rights, the enjoyment of which would be consistent with the nature of a free government, and the necessary subordination to the supreme power of the state.

. . . The man who alone undertakes to form a constitution, ought to be an unimpassioned being; one enlightened mind; biassed neither by the lust of power, the allurements of pleasure, nor the

glitter of wealth; perfectly acquainted with all the alienable and unalienable rights of mankind; possessed of this grand truth, that all men are born equally free, and that no man ought to surrender any part of his natural rights, without receiving the greatest possible equivalent; and influenced by the impartial principles of rectitude and justice, without partiality for, or prejudice against the interest or professions of any individuals or class of men. He ought also to be master of the histories of all the empires and states which are now existing, and all those which have figured in antiquity, and thereby able to collect and blend their respective excellencies, and avoid those defects which experience hath pointed out. . . .

The freemen inhabiting the territory of the Massachusetts-Bay are now forming a political society for themselves. Perhaps their situation is more favorable in some respects, for erecting a free government, than any other people were ever favored with. That attachment to old forms, which usually embarrasses, has not place amongst them. They have the history and experience of all States before them. Mankind have been toiling through ages for their information; and the philosophers and learned men of antiquity have trimmed their midnight lamps, to transmit to them instruction. We live also in an age, when the principles of political liberty, and the Foundation of governments, have been freely canvassed, and fairly settled. Yet some difficulties we have to encounter. Not content with removing our attachment to the old government, perhaps we have contracted a prejudice against some part of it without foundation. The idea of liberty has been held up in so dazzling colours, that some of us may not be willing to submit to that subordination necessary in the freest States. Perhaps we may say further, that we do not consider ourselves united as brothers, with an united interest, but have fancied a clashing of interests amongst the various classes of men, and have acquired a thirst of power, and a wish of domination, over some of the community. We are contending for freedom—Let us all be equally free—It is possible, and it is just. Our interests when candidly considered are one. Let us have a constitution founded, not upon party or prejudice—not one for to-day or to-morrow—but for posterity. Let *Esto perpetua* be it's motto. If it is founded in good policy; it will be founded in justice and honesty. Let all ambitions and interested views be discarded, and let regard be had only to the good of

the whole, in which the situation and rights of posterity must be considered: and let equal justice be done to all the members of the community; and we thereby imitate our common father, who at our births, dispersed his favors, not only with a liberal, but with an equal hand.

Was it asked, what is the best form of government for the people of the Massachusetts-Bay? we confess it would be a question of infinite importance: and the man who could truly answer it, would merit a statue of gold to his memory, and his fame would be recorded in the annals of late posterity, with unrivalled lustre. The question, however, must be answered, and let it have the best answer we can possibly give it. Was a man to mention a despotic government, his life would be a just forfeit to the resentments of an affronted people. Was he to hint monarchy, he would deservedly be hissed off the stage, and consigned to infamy. A republican form is the only one consonant to the feelings of the generous and brave Americans. Let us now attend to those principles, upon which all republican governments, who boast any degree of political liberty, are founded, and which must enter into the spirit of a FREE republican constitution. For all republics are not FREE.

All men are born equally free. The rights they possess at their births are equal, and of the same kind. Some of those rights are alienable, and may be parted with for an equivalent. Others are unalienable and inherent, and of that importance, that no equivalent can be received in exchange. Sometimes we shall mention the surrendering of a power to controul our natural rights, which perhaps is speaking with more precision, than when we use the expression of parting with natural rights—but the same thing is intended. Those rights which are unalienable, and of that importance, are called the rights of conscience. We have duties, for the discharge of which we are accountable to our Creator and benefactor, which no human power can cancel. What those duties are, is determinable by right reason, which may be, and is called, a well informed conscience. What this conscience dictates as our duty, is so; and that power which assumes a controul over it, is an usurper; for no consent can be pleaded to justify the controul, as any consent in this case is void. The alienation of some rights, in themselves alienable, may be also void, if the bargain is of that nature, that no equivalent can be received. Thus, if a man sur-

render all his alienable rights, without reserving a controul over the supreme power, or a right to resume in certain cases, the surrender is void, for he becomes a slave; and a slave can receive no equivalent. Common equity would set aside this bargain.

When men form themselves into society, and erect a body politic or State, they are to be considered as one moral whole, which is in possession of the supreme power of the State. This supreme power is composed of the powers of each individual collected together, and VOLUNTARILY parted with by him. No individual, in this case, parts with his unalienable rights, the supreme power therefore cannot controul them. Each individual also surrenders the power of controuling his natural alienable rights, ONLY WHEN THE GOOD OF THE WHOLE REQUIRES it. The supreme power therefore can do nothing but what is for the good of the whole; and when it goes beyond this line, it is a power usurped. If the individual receives an equivalent for the right of controul he has parted with, the surrender of that right is valid; if he receives no equivalent, the surrender is void, and the supreme power as it respects him is an usurper. If the supreme power is so directed and executed that he does not enjoy political liberty, it is an illegal power, and he is not bound to obey. Political liberty is by some defined, a liberty of doing whatever is not prohibited by law. The definition is erroneous. A tyrant may govern by laws. The republics of Venice and Holland govern by laws, yet those republics have degenerated into insupportable tyrannies. Let it be thus defined; political liberty is the right every man in the state has, to do whatever is not prohibited by laws, TO WHICH HE HAS GIVEN HIS CONSENT. This definition is in unison with the feelings of a free people. But to return—If a fundamental principle on which each individual enters into society is, that he shall be bound by no laws but those to which he has consented, he cannot be considered as consenting to any law enacted by a minority: for he parts with the power of controuling his natural rights, only when the good of the whole requires it; and of this there can be but one absolute judge in the state. If the minority can assume the right of judging, there may then be two judges; for however large the minority may be, there must be another body still larger, who have the same claim, if not a better, to the right of absolute determination. If therefore the supreme power should be so modelled and exerted,

that a law may be enacted by a minority, the inforcing of that law upon an individual who is opposed to it, is an act of tyranny. Further, as every individual, in entering into the society, parted with a power of controuling his natural rights equal to that parted with by any other, or in other words, as all the members of the society contributed an equal portion of their natural rights, towards the forming of the supreme power, so every member ought to receive equal benefit from, have equal influence in forming, and retain an equal controul over, the supreme power.

It has been observed, that each individual parts with the power of controuling his natural alienable rights, only when the good of the whole requires it; he therefore has remaining, after entering into political society, all his unalienable natural rights, and a part also of his alienable natural rights, provided the good of the whole does not require the sacrifice of them. Over the class of unalienable rights the supreme power hath no controul and they ought to be clearly defined and ascertained in a BILL OF RIGHTS, previous to the ratification of any constitution. The Bill of Rights should also contain the equivalent every man receives, as a consideration for the rights he has surrendered. This equivalent consists principally in the security of his person and property, and is also unassailable by the supreme power: for if the equivalent is taken back, those natural rights which were parted with to purchase it, return to the original proprietor, as nothing is more true, than that ALLEGIANCE AND PROTECTION ARE RECIPROCAL.

The committee also proceeded to consider upon what principles, and in what manner, the supreme power of the state thus composed of the powers of the several individuals thereof, may be formed, modelled, and exerted in a republic, so that every member of the state may enjoy political liberty. This is called by some, *the ascertaining of the political law of the state.* Let it now be called *the formation of a constitution.*

The reason why the supreme governor of the world is a rightful and just governor, and entitled to the allegiance of the universe is, because he is infinitely good, wise, and powerful. His goodness prompts him to the best measures, his wisdom qualifies him to discern them, and his power to effect them. In a state likewise, the supreme power is best disposed of, when it is so modelled and balanced, and rested in such hands, that it has the greatest share

of goodness, wisdom, and power, which is consistent with the lot of humanity.

That state, (other things being equal) which has reposed the supreme power in the hands of one or a small number of persons, is the most powerful state. . . .

But from a single person, or a very small number, we are not to expect that political honesty, and upright regard to the interest of the body of the people, and the civil rights of each individual, which are essential to a good and free constitution. For these qualities we are to go to the body of the people. The voice of the people is said to be the voice of God. No man will be so hardy and presumptuous, as to affirm the truth of that proposition in it's fullest extent. But if this is considered as the intent of it, that the people have always a disposition to promote their own happiness, and that when they have time to be informed, and the necessary means of information given them, they will be able to determine upon the necessary measures therefor, no man, of a tolerable acquaintance with mankind, will deny the truth of it. The inconvenience and difficulty in forming any free permanent constitution are, that such is the lot of humanity, the bulk of the people, whose happiness is principally to be consulted in forming a constitution, and in legislation, (as they include the majority) are so situated in life, and such are their laudable occupations, that they cannot have time for, nor the means of furnishing themselves with proper information, but must be indebted to some of their fellow subjects for the communication. . . .

Yet, when we are forming a Constitution, by deductions that follow from established principles, (which is the only good method of forming one for futurity,) we are to look further than to the bulk of the people, for the greatest wisdom, firmness, consistency, and perseverance. These qualities will most probably be found amongst men of education and fortune. From such men we are to expect genius cultivated by reading, and all the various advantages and assistances, which art, and a liberal education aided by wealth, can furnish. . . .

Let all these respective excellencies be united. Let the supreme power be so disposed and ballanced, that the laws may have in view the interest of the whole; let them be wisely and consistently framed for that end, and firmly adhered to; and let them be executed with vigour and dispatch.

. . . . It is not to be understood, that all the men of fortune of the present day, are men of wisdom and learning, or that they are not. Nor that the bulk of the people, the farmers, the merchants, the tradesmen, and labourers, are all honest and upright, with single views to the public good, or that they are not. In each of the classes there are undoubtedly exceptions, as the rules laid down are general. The proposition is only this. That among gentlemen of education, fortune and leisure, we shall find the largest number of men, possessed of wisdom, learning, and a firmness and consistency of character. That among the bulk of the people, we shall find the greatest share of political honesty, probity, and a regard to the interest of the whole, of which they compose the majority. That wisdom and firmness are not sufficient without good intentions, nor the latter without the former. The conclusion is, let the legislative body unite them all. The former are called the excellencies that result from an aristocracy; the latter, those that result from a democracy.

The supreme power is considered as including the legislative, judicial, and executive powers. The nature and employment of these several powers deserve a distinct attention.

The legislative power is employed in making laws, or prescribing such rules of action to every individual in the state, as the good of the whole requires, to be conformed to by him in his conduct to the governors and governed, with respect both to their persons and property, according to the several relations he stands in. What rules of action the good of the whole requires, can be ascertained only by the majority, for a reason formerly mentioned. Therefore the legislative power must be so formed and exerted, that in prescribing any rule of action, or, in other words, enacting any law, the majority must consent. . . .

A little attention to the subject will convince us, that these three powers ought to be in different hands, and independent of one another, and so ballanced, and each having that check upon the other, that their independence shall be preserved—If the three powers are united, the government will be absolute, *whether these powers are in the hands of one or a large number.* The same party will be the legislator, accuser, judge and executioner; and what probability will an accused person have of an acquittal, however innocent he may be, when his judge will be also a party.

If the legislative and judicial powers are united, the maker of

the law will also interpret it; and the law may then speak a language, dictated by the whims, the caprice, or the prejudice of the judge, with impunity to him—And what people are so unhappy as those, whose laws are uncertain. It will also be in the breast of the judge, when grasping after his prey, to make a retrospective law, which shall bring the unhappy offender within it; and this also he can do with impunity—The subject can have no peaceable remedy—The judge will try himself, and an acquittal is the certain consequence. He has it also in his power to enact any law, which may shelter him from deserved vengeance.

Should the executive and legislative powers be united, mischiefs the most terrible would follow. The executive would enact those laws it pleased to execute, and no others—The judicial power would be set aside as inconvenient and tardy—The security and protection of the subject would be a shadow—The executive power would make itself absolute, and the government end in a tyranny—Lewis the eleventh of France, by cunning and treachery compleated the union of the executive and legislative powers of that kingdom, and upon that union established a system of tyranny. France was formerly under a free government.

The assembly or representatives of the united states of Holland, exercise the executive and legislative powers, and the government there is absolute.

Should the executive and judicial powers be united, the subject would then have no permanent security of his person and property. The executive power would interpret the laws and bend them to his will; and, as he is the judge, he may leap over them by artful constructions, and gratify, with impunity, the most rapacious passions. Perhaps no cause in any state has contributed more to promote internal convulsions, and to stain the scaffold with it's best blood, than this unhappy union. . . .

THE CONSTITUTION OF MASSACHUSETTS[1]

1780

This constitution clearly shows the marks of the observation of other state constitutions and of the very careful planning which went to make it by far the most mature constitutional product of the Revolution. While not the work of any one man, John Adams was its chief architect and draftsman.

Preamble

The end of the institution, maintenance, and administration of government is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life: and whenever these great objects are not obtained the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness.

The body politic is formed by a voluntary association of individuals: It is a social compact by which the whole people covenants with each citizen and each citizen with the whole people that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government for ourselves and posterity; and devoutly imploring his direction in so interesting a design, do agree upon, ordain, and establish the following declaration of rights and frame of government as the constitution of the commonwealth of Massachusetts.

Article I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be

[1] *The Laws of the Commonwealth of Massachusetts*, 1780–1800. Boston: Manning & Loring. 1801. Vol. I, pp. 18–45.

reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

Article II. It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace or obstruct others in their religious worship.

Article III. As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of public instructions in piety, religion, and morality: Therefore, To promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic or religious societies to make suitable provision, at their own expense, for the institution of the public worship of God and for the support and maintenance of public Protestant teachers of piety, religion, and morality in all cases where such provision shall not be made voluntarily.

And the people of this commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Provided, notwithstanding, That the several towns, parishes, precincts, and other bodies politic, or religious societies, shall at all times have the exclusive right of electing their public teachers and of contracting with them for their support and maintenance.

And all moneys paid by the subject to the support of public worship and of the public teachers aforesaid shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends; otherwise it may be paid toward

the support of the teacher or teachers of the parish or precinct in which the said moneys are raised.

And every denomination of Christians, demeaning themselves peaceably and as good subjects of the commonwealth, shall be equally under the protection of the law: and no subordination of any one sect or denomination to another shall ever be established by law.

ARTICLE IV. The people of this commonwealth have the sole and exclusive right of governing themselves as a free, sovereign, and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right which is not, or may not hereafter be, by them expressly delegated to the United States of America in Congress assembled.

ARTICLE V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

ARTICLE VI. No man nor corporation or association of men have any other title to obtain advantages, or particular and exclusive privileges distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary nor transmissible to children or descendants or relations by blood; the idea of a man born a magistrate, lawgiver, or judge is absurd and unnatural.

ARTICLE VII. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same when their protection, safety, prosperity, and happiness require it.

ARTICLE VIII. In order to prevent those who are vested with authority from becoming oppressors, the people have a right at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

ARTICLE IX. All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they

shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

Article x. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of an individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

Article xi. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

Article xii. No subject shall be held to answer for any crime or offence until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face; and to be fully heard in his defence by himself, or his counsel at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Article xiii. In criminal prosecutions, the verification of facts, in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

Article xiv. Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his

papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: And no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

Article xv. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.

Article xvi. The liberty of the press is essential to the security of freedom in a State; it ought not, therefore, to be restrained in this commonwealth.

Article xvii. The people have a right to keep and to bear arms for the common defence. And as, in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority and be governed by it.

Article xviii. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: And they have a right to require of their law-givers and magistrates an exact and constant observance of them, in the formation and execution of the laws necessary for the good administration of the commonwealth.

Article xix. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer.

Article xx. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for.

Article xxi. The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

Article xxii. The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

Article xxiii. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature.

Article xxiv. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive and inconsistent with the fundamental principles of a free government.

Article xxv. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

Article xxvi. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

Article xxvii. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

Article xxviii. No person can in any case be subjected to lawmartial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

Article xxix. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the secu-

rity of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

Article xxx. In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: The executive shall never exercise the legislative and judicial powers, or either of them: The judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws, and not of men.

The Frame of Government

The people inhabiting the territory formerly called the province of Massachusetts-Bay do hereby solemnly and mutually agree with each other to form themselves into a free, sovereign, and independent body politic, by the name of the Commonwealth of Massachusetts.

The Legislative Power

The General Court

Article i. The department of legislation shall be formed by two branches, a *senate* and *house of representatives:* each of which shall have a negative on the other.

The legislative body shall assemble every year on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May; and shall be styled the *General Court of Massachusetts.*

Article ii. No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal: And if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in which soever the same shall have originated, who shall enter the objections sent down by the governor, at large, on their

records, and proceed to re-consider the said bill or resolve: But if, after such re-consideration, two thirds of the said senate or house of representatives, shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be re-considered, and if approved by two thirds of the members present, shall have the force of a law: But in all such cases, the vote of both houses shall be determined by yeas and nays; and the names of the persons voting for or against the said bill or resolve shall be entered upon the public records of the commonwealth.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of law.

Article III. The general court shall forever have full power and authority to erect and constitute judicatories and courts of record or other courts, to be held in the name of the commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes, and things whatsoever, arising or happening within the commonwealth, or between or concerning persons inhabiting or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixt; and for the awarding and making out of execution thereupon: To which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

Article IV. And further, full power and authority are hereby given and granted to the said general court from time to time, to make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several

duties, powers, and limits of the several civil and military officers of this commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth; and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this commonwealth, for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of the said commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the commonwealth, taken anew once in every ten years at least, and as much oftener as the general court shall order.

Senate

Article I. There shall be annually elected, by the freeholders and other inhabitants of this commonwealth, qualified as in this constitution is provided, forty persons to be councillors and senators, for the year ensuing their election; to be chosen by the inhabitants of the districts into which the commonwealth may from time to time be divided by the general court for that purpose; and the general court, in assigning the numbers to be elected by the respective districts, shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known to the inhabitants of the commonwealth the limits of each district, and the number of councillors and senators to be chosen therein: *Provided*, That the number of such districts shall never be less than thirteen; and that no district be so large as to entitle the same to choose more than six senators. . . .

Article II. The senate shall be the first branch of the legislature; and the senators shall be chosen in the following manner, viz: There shall be a meeting on the first Monday in April, annually, forever, of the inhabitants of each town in the several counties of this commonwealth, to be called by the selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be senators and councillors; and at such meetings every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant. And to remove all doubts concerning the meaning of the word "inhabitant", in this constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district, or plantation where he dwelleth or hath his home. . . .

Article V. *Provided, nevertheless,* That no person shall be capable of being elected as a senator who is not seized in his own right of a freehold within this commonwealth, of the value of three hundred pounds at least, or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and who has not been an inhabitant of this commonwealth for the space of five years immediately preceding his election, and, at the time of his election, he shall be an inhabitant in the district for which he shall be chosen. . . .

House of Representatives

Article I. There shall be, in the legislature of this commonwealth, a representation of the people, annually elected, and founded upon the principle of equality.

Article II. And in order to provide for a representation of the citizens of this commonwealth, founded upon the principle of equality, every corporate town containing one hundred and fifty ratable polls, may elect one representative: every corporate town containing three hundred and seventy-five ratable polls, may elect two representatives: every corporate town containing six hundred ratable polls, may elect three representatives; and proceeding in that manner, making two hundred and twenty-five

ratable polls the mean increasing number for every additional representative.

Provided, nevertheless, That each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative: But no place shall hereafter be incorporated with the privilege of electing a representative, unless there are within the same one hundred and fifty ratable polls.

And the house of representatives shall have power, from time to time, to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this constitution.

The expenses of travelling to the general assembly and returning home, once in every session, and no more, shall be paid by the government out of the public treasury, to every member who shall attend as seasonably as he can, in the judgment of the house, and does not depart without leave.

Article III. Every member of the house of representatives shall be chosen by written votes; and, for one year at least next preceding his election, shall have been an inhabitant of, and have been seized in his own right of a freehold of the value of one hundred pounds, within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds; and he shall cease to represent the said town immediately on his ceasing to be qualified as aforesaid.

Article IV. Every male person being twenty-one years of age, and resident in any particular town in this commonwealth, for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative or representatives for the said town.

Article V. The members of the house of representatives shall be chosen annually in the month of May, ten days at least before the last Wednesday of that month.

Article VI. The house of representatives shall be the grand inquest of this commonwealth; and all impeachments made by them shall be heard and tried by the senate.

Article VII. All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills. . . .

Executive Power

Governor

Article I. There shall be a supreme executive magistrate, who shall be styled "The governor of the commonwealth of Massachusetts;" and whose title shall be "His Excellency."

Article II. The governor shall be chosen annually; and no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this commonwealth for seven years next preceding; and unless he shall, at the same time, be seized, in his own right, of a freehold, within the commonwealth, of the value of one thousand pounds; and unless he shall declare himself to be of the Christian religion.

Article III. Those persons who shall be qualified to vote for senators and representatives, within the several towns of this commonwealth, shall, at a meeting to be called for that purpose, on the first Monday of April, annually, give in their votes for a governor to the selectmen, who shall preside at such meetings; and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town-meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the last Wednesday in May: and the sheriff shall transmit the same to the secretary's office, seventeen days at least before the said last Wednesday in May; or the selectmen may cause returns of the same to be made, to the office of the secretary of the commonwealth, seventeen days at least before the said day; and the secretary shall lay the same before the senate and the house of representatives, on the last Wednesday in May, to be by them examined: And in case of an election by a majority of all the votes returned, the choice shall be by them declared and published: But if no person shall have a majority of votes, the house of representatives shall, by ballot, elect two out of four persons, who had the highest number of votes, if so many shall have been voted for; but, if otherwise, out of the number voted for; and make return to the

senate of the two persons so elected; on which the senate shall proceed, by ballot, to elect one, who shall be declared governor.

Article iv. The governor shall have authority, from time to time, at his discretion, to assemble and call together the councillors of this commonwealth for the time being; and the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, agreeably to the constitution and the laws of the land.

Article v. The governor, with advice of council, shall have full power and authority, during the session of the general court, to adjourn or prorogue the same at any time the two houses shall desire; and to dissolve the same on the day next preceding the last Wednesday in May; and, in the recess of the said court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the commonwealth shall require the same: And in case of any infectious distemper prevailing in the place where the said court is next at any time to convene, or any other cause happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other the most convenient place within the State.

And the governor shall dissolve the said general court on the day next preceding the last Wednesday in May.

Article vi. In cases of disagreement between the two houses, with regard to the necessity, expediency, or time of adjournment or prorogation, the governor, with advice of council, shall have a right to adjourn or prorogue the general court, not exceeding ninety days, as he shall determine the public good shall require.

Article vii. The governor in this commonwealth, for the time being, shall be the commander in chief of the army and navy, and of all the military forces of the State, by sea and land; and shall have full power, by himself or by any commander, or other officer or officers, from time to time, to train, instruct, exercise, and govern the militia and navy; and, for the special defence and safety of the commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them to encounter, repel, resist, expel, and pursue, by force of arms, as well by sea as by land, within or without the

limits of this commonwealth; and also to kill, slay, and destroy, if necessary, and conquer, by all fitting ways, enterprises, and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this commonwealth; and to use and exercise over the army and navy, and over the militia in actual service, the law-martial, in time of war or invasion, and also in time of rebellion, declared by the legislature to exist, as occasion shall necessarily require; and to take and surprise by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition, and other goods, as shall, in a hostile manner, invade, or attempt the invading, conquering, or annoying this commonwealth; and that the governor be intrusted with all these and other powers incident to the offices of captain-general and commander in chief, and admiral, to be exercised agreeably to the rules and regulations of the constitution and the laws of the land, and not otherwise.

Provided, That the said governor shall not, at any time hereafter, by virtue of any power by this constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court; except so far as may be necessary to march or transport them by land or water for the defence of such part of the State to which they cannot otherwise conveniently have access.

Article viii. The power of pardoning offences, except such as persons may be convicted of before the senate, by an impeachment of the house, shall be in the governor, by and with the advice of council: But no charter or pardon, granted by the governor, with advice of the council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

Article ix. All judicial officers, the attorney-general, the solicitor-general, all sheriffs, coroners, and registers of probate, shall be nominated and appointed by the governor, by and with the advice and consent of the council; and every such nomination shall be made by the governor, and made at least seven days prior to such appointment. . . .

Lieutenant-Governor

ARTICLE I. There shall be annually elected a lieutenant-governor of the Commonwealth of Massachusetts, whose title shall be—"His Honor"—and who shall be qualified, in point of religion, property, and residence in the commonwealth, in the same manner with the governor: And the day and manner of his election, and the qualifications of the electors, shall be the same as are required in the election of a governor. The return of the votes for this officer, and the declaration of his election, shall be in the same manner: And if no one person shall be found to have a majority of all the votes returned, the vacancy shall be filled by the senate and house of representatives, in the same manner as the governor is to be elected, in case no one person shall have a majority of the votes of the people to be governor. . . .

Council, etc.

ARTICLE I. There shall be a council, for advising the governor in the executive part of the government, to consist of nine persons besides the lieutenant-governor, whom the governor, for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together. And the governor, with the said councillors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the commonwealth, according to the laws of the land.

ARTICLE II. Nine councillors shall be annually chosen from among the persons returned for councillors and senators, on the last Wednesday in May, by the joint ballot of the senators and representatives assembled in one room; and in case there shall not be found, upon the first choice, the whole number of nine persons who will accept a seat in the council, the deficiency shall be made up by the electors aforesaid from among the people at large; and the number of senators left shall constitute the senate for the year. The seats of the persons thus elected from the senate, and accepting the trust, shall be vacated in the senate. . . .

ARTICLE VI. Whenever the office of the governor and lieutenant-governor shall be vacant by reason of death, absence, or otherwise, then the council, or the major part of them, shall, during such vacancy, have full power and authority to do and execute all and

every such acts, matters, and things, as the governor or the lieutenant-governor might or could, by virtue of this constitution, do or execute, if they, or either of them, were personally present. . . .

Judiciary Power

ARTICLE I. The tenure that all commission officers shall by law have in their offices shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned, and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: *Provided, nevertheless,* the Governor, with consent of the council, may remove them upon the address of both houses of the legislature.

ARTICLE II. Each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court upon important questions of law, and upon solemn occasions. . . .[1]

THOMAS JEFFERSON

NOTES ON THE STATE OF VIRGINIA[2]

1782

This selection is taken from Jefferson's one book. The work was written at the request of M. de Marbois, secretary to the French embassy, and deals in most comprehensive fashion with the physiographic, economic, agricultural, and political conditions in Virginia. In his comments upon the state constitu-

[1] This constitution contained no provision for regular and continuous amendment but Article X of the last chapter did provide that "In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary," the General Court shall, in 1795, direct the officers of the towns to ascertain whether the voters of the Commonwealth desire a convention to revise the constitution. If two-thirds of those voting favor revision the General Court is instructed to provide for the election of such a convention.

[2] *NOTES on the state of VIRGINIA written in the year 1781, somewhat corrected and enlarged in the winter of 1782, for the use of a Foreigner of distinction, in answer to certain queries by him.* . . . 1782. [The first edition, although dated 1782, was not actually published until 1784.]

tion Jefferson presents a more nearly systematic study of politics than at any other place in his many writings about government. Numerous editions of the work appeared shortly after its first publication, and it achieved wide popularity in both Europe and America.

[161] . . . . During the regal government we had at one time obtained a law which imposed such a duty on the importation of slaves as amounted nearly to a prohibition, when one inconsiderate assembly, placed under a peculiarity of circumstance, repealed the law. This repeal met with a joyful sanction from the then sovereign, and no devices, no expedients, which could ever be attempted by subsequent assemblies, and they seldom met without attempting them, could succeed in getting the royal assent to a renewal of the duty. In the very first session held under the republican government, the assembly passed a law for the perpetual prohibition of the importation of slaves. This will in some measure stop the increase of this great political and moral evil, while the minds of our citizens may be ripening for a complete emancipation of human nature. . . .

[211] This constitution [the Virginia constitution of 1776] was formed when we were new and unexperienced in the science of government. It was the first, too, which was formed in the whole United States. No wonder then that time and trial have discovered very capital defects in it.

1. The majority of the men in the state, who pay and fight for its support, are unrepresented in the legislature, the roll of freeholders entitled to vote, not including generally the half of those on the roll of the militia, or of the tax-gatherers.

2. Among those who share the representation, the shares are very unequal. . . .

. . . . It will appear at once that nineteen thousand men, living below the falls of the rivers, possess half of the senate, and want four members only of possessing a majority of the house of delegates; a want more than supplied by the vicinity of their situation to the seat of government, and of course the greater degree of convenience and punctuality with which their members may and will attend in the legislature. These nineteen thousand, therefore, living in one part of the country, give law to upwards of thirty thousand living in another, and appoint all their chief officers executive and judiciary. From the difference of their situation and circumstances, their interests will often be very different.

3. The senate is, by its constitution, too homogenous with the house of delegates. Being chosen by the same electors, at the same time, and out of the same subjects, the choice falls of course on men of the same description. The purpose of establishing different houses of legislation is to introduce the influence of different interests or different principles. . . . In some of the American States, the delegates and senators are so chosen, as that the first represents the persons, and the second the property of the State. But with us, wealth and wisdom have equal chance for admission into both houses. We do not, therefore derive from the separation of our legislature into two houses, those benefits which proper complication of principles is capable of producing, and those which alone can compensate the evils which may be produced by their dissensions.

4. All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. 173 despots would surely be as oppressive as one. . . . The public money and public liberty, intended to have been deposited with three branches of magistracy, but found inadvertently to be in the hands of one only, will soon be discovered to be sources of wealth and dominion to those who hold them; distinguished, too, by this tempting circumstance, that they are the instrument, as well as the object, of acquisition. With money we will get men, said Cæsar, and with men we will get money. Nor should our assembly be deluded by the integrity of their own purposes, and conclude that these unlimited powers will never be abused, because themselves are not disposed to abuse them. They should look forward to a time, and that not a distant one, when a corruption in this, as in the country from which we derive our origin, will have seized the heads of government, and be spread by them through the body of the people; when they will purchase the voices of the people, and make them pay the price. Human nature is the same on every side of the Atlantic, and will be alike influenced by the same causes. The time to guard against corruption and tyranny, is before they shall have gotten hold of us. It is better to keep the wolf out of the fold, than to trust to drawing his teeth and talons after he shall have entered. To render these considerations the more cogent, we must observe in addition:

5. That the ordinary legislature may alter the constitution itself. . . .

[226] 6. That the assembly exercise a power of determining the quorum of their own body which may legislate for us. . . . The power, however, of fixing their own quorum has been avowed, and a precedent set. From forty it may be reduced to four, and from four to one; from a house to a committee, from a committee to a chairman or speaker, and thus an oligarchy or monarchy be substituted under forms supposed to be regular. . . . When, therefore, it is considered, that there is no legal obstacle to the assumption by the assembly of all the powers legislative, executive, and judiciary, and that these may come to the hands of the smallest rag of delegation, surely the people will say, and their representatives, while yet they have honest representatives, will advise them to say, that they will not acknowledge as laws any acts not considered and assented to by the major part of their delegates.

In enumerating the defects of the constitution, it would be wrong to count among them what is only the error of particular persons. In December 1776, our circumstances being much distressed, it was proposed in the house of delegates to create a *dictator*, invested with every power legislative, executive, and judiciary, civil and military, of life and death, over our persons and over our properties: and in June 1781, again under calamity, the same proposition was repeated, and wanted a few votes only of being passed.—One who entered into this contest from a pure love of liberty, and a sense of injured rights, who determined to make every sacrifice, and to meet every danger, for the re-establishment of those rights on a firm basis, who did not mean to expand his blood and substance for the wretched purpose of changing this master for that, but to place the powers of governing him in a plurality of hands of his own choice, so that the corrupt will of no one man might in future oppress him, must stand confounded and dismayed when he is told, that a considerable portion of that plurality had meditated the surrender of them into a single hand, and, in lieu of a limited monarch, to deliver him over to a despotic one! How must he find his efforts and sacrifices abused and baffled, if he may still, by a single vote, be laid prostrate at the feet of one man! In God's name, from whence have they derived this power? Is it from our ancient laws? None such can be produced. Is it from any principle in our new constitution expressed

or implied? Every lineament of that, expressed or implied, is in full opposition to it. Its fundamental principle is, that the state shall be governed as a commonwealth. It provides a republican organization, proscribes under the name of *prerogative* the exercise of all powers undefined by the laws; places on this basis the whole system of our laws; and by consolidating them together, chooses that they shall be left to stand or fall together, never providing for any circumstances, nor admitting that such could arise, wherein either should be suspended; no, not for a moment. Our antient laws expressly declare, that those who are but delegates themselves shall not delegate to others powers which require judgment and integrity in their exercise.—Or was this proposition moved on a supposed right in the movers, of abandoning their posts in a moment of distress? The same laws forbid the abandonment of that post, even on ordinary occasions; and much more a transfer of their powers into other hands and other forms, without consulting the people. They never admit the idea that these, like sheep or cattle, may be given from hand to hand without an appeal to their own will.—Was it from the necessity of the case? Necessities which dissolve a government, do not convey its authority to an oligarchy or a monarchy. They throw back, into the hands of the people, the powers they had delegated, and leave them as individuals to shift for themselves. A leader may offer, but not impose himself, nor be imposed on them. Much less can their necks be submitted to his sword, their breath be held at his will or caprice. The necessity which should operate these tremendous effects should be least be palpable and irresistible. Yet in both instances, where it was feared, or pretended with us, it was belied by the event. . . . What clause in our constitution has substituted that of Rome, by way of residuary provision, for all cases not otherwise provided for? Or if they may step ad libitum into any other form of government for precedents to rule us by, for what oppression may not a precedent be found in this world of the bellum omnium in omnia? Searching for the foundations of this proposition, I can find none which may pretend a colour of right or reason, but the defect before developed, that there being no barrier between the legislative, executive, and judiciary departments, the legislature may seize the whole: that having seized it, and possessing a right to fix their own quorum, they may reduce that quorum to one, whom they may call a chairman,

speaker, dictator, or by any other name they please.—Our situation is indeed perilous, and I hope my countrymen will be sensible of it, and will apply, at a proper season, the proper remedy; which is a convention to fix the constitution, to amend its defects, to bind up the several branches of government by certain laws, which, when they transgress, their acts shall become nullities; to render unnecessary an appeal to the people, or in other words a rebellion, on every infraction of their rights, on the peril that their acquiescence shall be construed into an intention to surrender those rights. . . .

[267] Another object of the revisal is, to diffuse knowledge more generally through the mass of the people. This bill proposes to lay off every country into small districts of five or six miles square, called hundreds and in each of them to establish a school for teaching, reading, writing, and arithmetic. The tutor to be supported by the hundred, and every person in it entitled to send their children three years gratis, and as much longer as they please, paying for it. These schools to be under a visitor who is annually to chuse the boy of best genius in the school, of those whose parents are too poor to give them further education, and to send him forward to one of the grammar schools, of which twenty are proposed to be erected in different parts of the country, for teaching Greek, Latin, geography, and the higher branches of numerical arithmetic. Of the boys thus sent in any one year, trial is to be made at the grammar schools one or two years, and the best genius of the whole selected, and continued six years, and the residue dismissed. By this means twenty of the best geniuses will be raked from the rubbish annually, and be instructed, at the public expence, so far as the grammar schools go. At the end of six years instruction, one half are to be discontinued (from among whom the grammar schools will probably be supplied with future masters); and the other half, who are to be chosen for the superiority of their parts and disposition, are to be sent and continued three years in the study of such sciences as they shall chuse, at William and Mary college, the plan of which is proposed to be enlarged, as will be hereafter explained, and extended to all the useful sciences. The ultimate result of the whole scheme of education would be the teaching all the children of the State reading, writing, and common arithmetic; turning out ten annually, of superior genius, well taught in Greek, Latin, geography, and the higher

branches of arithmetic; turning out ten others annually, of still superior parts, who, to those branches of learning, shall have added such of the sciences as their genius shall have led them to; the furnishing to the wealthier part of the people convenient schools at which their children may be educated at their own expence.—The general objects of this law are to provide an education adapted to the years, to the capacity, and the condition of every one, and directed to their freedom and happiness. . . . By that part of our plan which prescribes the selection of the youths of genius from among the classes of the poor, we hope to avail the state of those talents which nature has sown as liberally among the poor as the rich, but which perish without use, if not sought for and cultivated.—But of all the views of this law none is more important, none more legitimate, than that of rendering the people the safe, as they are the ultimate, guardians of their own liberty. For this purpose the reading in the first stage, where *they* will receive their whole education, is proposed, as has been said, to be chiefly historical. History, by apprising them of the past, will enable them to judge of the future; it will avail them of the experience of other times and other nations; it will qualify them as judges of the actions and designs of men; it will enable them to know ambition under every disguise it may assume; and knowing it, to defeat its views. In every government on earth is some trace of human weakness, some germ of corruption and degeneracy, which cunning will discover, and wickedness insensibly open, cultivate and improve. Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories. And to render even them safe, their minds must be improved to a certain degree. This indeed is not all that is necessary, though it be essentially necessary. An amendment of our constitution must here come in aid of the public education. The influence over government must be shared among all the people. If every individual which composes their mass participates of the ultimate authority, the government will be safe; because the corrupting the whole mass will exceed any private resources of wealth; and public ones cannot be provided but by levies on the people. In this case every man would have to pay his own price. The government of Great Britain has been corrupted, because but one man in ten has a right to vote for members of parliament. The sellers of the government, therefore,

get nine-tenths of their price clear. It has been thought that corruption is restrained by confining the right of suffrage to a few of the wealthier of the people: but it would be more effectually restrained by an extension of that right to such numbers as would bid defiance to the means of corruption. . . .

[291] . . . . This is a summary view of that religious slavery under which a people have been willing to remain who have lavished their lives and fortunes for the establishment of their civil freedom. The error seems not sufficiently eradicated, that the operations of the mind, as well as the acts of the body, are subject to the coercion of the laws. But our rulers can have authority over such natural rights, only as we have submitted to them. The rights of conscience we never submitted, we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg. If it be said his testimony in a court of justice cannot be relied on, reject it then, and be the stigma on him. Constraint may make him worse by making him a hypocrite, but it will never make him a truer man. It may fix him obstinately in his errors, but will not cure them. Reason and free inquiry are the only effectual agents against error. Give a loose to them, they will support the true religion by bringing every false one to their tribunal, to the test of their investigation. They are the natural enemies of error, and of error only. . . .

[302] The political economists of Europe have established it as a principle, that every State should endeavour to manufacture for itself; and this principle, like many others, we transfer to America, without calculating the difference of circumstances which should often produce a difference of result. In Europe the lands are either cultivated, or locked up against the cultivator. Manufacture must therefore be resorted to, of necessity, not of choice, to support the surplus of their people. But we have an immensity of land courting the industry of the husbandman. Is it best then that all our citizens should be employed in its improvement, or that one half should be called off from that to exercise manufactures and handicraft arts for the other? Those who labour in the earth are the chosen people of God, if ever he had a chosen people, whose breasts he has made his peculiar deposit for sub-

stantial and genuine virtue. It is the focus in which he keeps alive that sacred fire, which otherwise might escape from the face of the earth. Corruption of morals in the mass of cultivators is a phænomenon of which no age nor nation has furnished an example. It is the mark set on those, who not looking up to heaven, to their own soil and industry, as does the husbandman, for their subsistence, depend for it on casualties and caprice of customers. Dependance begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of ambition. This, the natural progress and consequence of the arts, has sometimes perhaps been retarded by accidental circumstances: but, generally speaking the proportion which the aggregate of the other classes of citizens bears in any state to that of its husbandmen, is the proportion of its unsound to its healthy parts, and is a good enough barometer whereby to measure its degree of corruption. While we have land to labour then, let us never wish to see our citizens occupied at a work-bench, or twirling a distaff. Carpenters, masons, smiths, are wanting in husbandry; but, for the general operations of manufacture, let our work-shops remain in Europe. It is better to carry provisions and materials to workmen there, than bring them to the provisions and materials, and with them their manners and principles. The loss by the transportation of commodities across the Atlantic will be made up in happiness and permanence of government. The mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body. It is the manners and spirit of a people which preserve a republic in vigour. A degeneracy in these is a canker which soon eats to the heart of its laws and constitution.[1] . . .

[1] In a letter to J. Lithgow (January 4, 1805) concerning the question of a revised edition of the *Notes*, Jefferson wrote:

" I should in that case certainly qualify several expressions in the nineteenth chapter, which have been construed differently from what they were intended. I had under my eye when writing, the manufactures of the great cities of the old countries, at the present time, with whom the want of food and clothing necessary to sustain life, has begotten a depravity of morals, a dependence and corruption, which renders them an undesirable accession to a country whose morals are sound. My expressions look forward to the time when our own great cities would get into the same state. . . . As yet our manufactures are as much at their ease, as independent and moral as our agricultural habits, and they will continue so as long as there are vacant lands for them to resort to; because whenever it shall be attempted by the other classes to reduce them to the minimum of subsistence, they will quit their trades and go to laboring the earth. . . . " *Writings of Thomas Jefferson*, ed. Ford, vol. III, p. 269.

JOHN ADAMS

DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICA [1]

1786–88

This selection is from a work which ran to three long and, for the most part dull, volumes. As the title indicates, it was written in defence of the State constitutions, and particularly in defence of the principle of separation powers as incorporated in the constitution of Massachusetts. The immediate occasion of the book was the publication of a brief argument by M. Turgot to the effect that power in the state should be concentrated in one organ rather than divided among three. Most of the work consists of long descriptions of various political systems, and of citations from many different kinds of authorities. For all of its faults it is probably the best defence by an American of the theory of checks and balances.

[288] It is become a kind of fashion among writers, to admit, as a maxim, that if you could be always sure of a wise, active, and virtuous prince, monarchy would be the best of governments. But this is so far from being admissible, that it will forever remain true, that a free government has a great advantage over a simple monarchy. The best and wisest prince, by means of a freer communication with his people, and the greater opportunities to collect the best advice from the best of his subjects, would have an immense advantage in a free state over a monarchy. A senate consisting of all that is most noble, wealthy, and able in the nation, with a right to counsel the crown at all times, is a check to ministers, and a security against abuses, such as a body of nobles who never meet, and have no such right, can never supply. Another assembly, composed of representatives chosen by the people in all parts, gives free access to the whole nation, and communicates all its wants, knowledge, projects, and wishes to government; it excites emulation among all classes, removes complaints, redresses grievances, affords opportunities of exertion to genius, though in obscurity, and gives full scope to all the faculties of man; it opens a passage for every speculation to the legislature, to administration, and to the public; it gives a universal energy to the human character, in every part of the state, such as never can be obtained in a monarchy.

[1] *The Works of John Adams*, vol. IV.

There is a third particular which deserves attention both from governments and people. In a simple monarchy, the ministers of state can never know their friends from their enemies; secret cabals undermine their influence, and blast their reputation. This occasions a jealousy ever anxious and irritated, which never thinks the government safe without an encouragement of informers and spies, throughout every part of the state, who interrupt the tranquillity of private life, destroy the confidence of families in their own domestics and in one another, and poison freedom in its sweetest retirement. In a free government, on the contrary, the ministers can have no enemies of consequence but among the members of the great or little council, where every man is obliged to take his side, and declare his opinion, upon every question. This circumstance alone, to every manly mind, would be sufficient to decide the preference in favor of a free government. Even secrecy, where the executive is entire in one hand, is as easily and surely preserved in a free government, as in a simple monarchy; and as to despatch all the simple monarchies of the whole universe may be defied to produce greater or more numerous examples of it than are to be found in English history. An Alexander, or a Frederic, possessed of the prerogatives only of a king of England, and leading his own armies, would never find himself embarrassed or delayed in any honest enterprise. He might be restrained, indeed, from running mad, and from making conquests to the ruin of his nation, merely for his own glory; but this is no argument against a free government.

There can be no free government without a democratical branch in the constitution. Monarchies and aristocracies are in possession of the voice and influence of every university and academy in Europe. Democracy, simple democracy, never had a patron among men of letters. Democratical mixtures in government have lost almost all the advocates they ever had out of England and America. Men of letters must have a great deal of praise, and some of the necessaries, conveniences, and ornaments of life. Monarchies and aristocracies pay well and applaud liberally. The people have almost always expected to be served gratis, and to be paid for the honor of serving them; and their applauses and adorations are bestowed too often on artifices and tricks, on hypocrisy and superstition, on flattery, bribes, and largesses. It is no wonder then that democracies and democratical mixtures are an-

nihilated all over Europe, except on a barren rock, a paltry fen, an inaccessible mountain, or an impenetrable forest. The people of England, to their immortal honor, are hitherto an exception; but, to the humiliation of human nature, they show very often that they are like other men. The people in America have now the best opportunity and the greatest trust in their hands, that Providence ever committed to so small a number, since the transgression of the first pair; if they betray their trust, their guilt will merit even greater punishment than other nations have suffered, and the indignation of Heaven. If there is one certain truth to be collected from the history of all ages, it is this; that the people's rights and liberties, and the democratical mixture in a constitution, can never be preserved without a strong executive, or, in other words, without separating the executive from the legislative power. If the executive power, or any considerable part of it, is left in the hands either of an aristocratical or a democratical assembly, it will corrupt the legislature as necessarily as rust corrupts iron, or as arsenic poisons the human body; and when the legislature is corrupted, the people are undone.

The rich, the well-born, and the able, acquire an influence among the people that will soon be too much for simple honesty and plain sense, in a house of representatives. The most illustrious of them must, therefore, be separated from the mass, and placed by themselves in a senate; this is, to all honest and useful intents, an ostracism. A member of a senate, of immense wealth, the most respected birth, and transcendent abilities, has no influence in the nation, in comparison of what he would have in a single representative assembly. When a senate exists, the most powerful man in the state may be safely admitted into the house of representatives, because the people have it in their power to remove him into the senate as soon as his influence becomes dangerous. The senate becomes the great object of ambition; and the richest and the most sagacious wish to merit an advancement to it by services to the public in the house. When he has obtained the object of his wishes, you may still hope for the benefits of his exertions, without dreading his passion; for the executive power being in other hands, he has lost much of his influence with the people, and can govern very few votes more than his own among the senators.

It was the general opinion of ancient nations, that the Divinity alone was adequate to the important office of giving laws to men.

The Greeks entertained this prejudice throughout all their dispersions; the Romans cultivated the same popular delusion; and modern nations, in the consecration of kings, and in several superstitious chimeras of divine right in princes and nobles, are nearly unanimous in preserving remnants of it. . . .

[292] The United States of America have exhibited, perhaps, the first example of governments erected on the simple principles of nature; and if men are now sufficiently enlightened to disabuse themselves of artifice, imposture, hypocrisy, and superstition, they will consider this event as an era in their history. Although the detail of the formation of the American governments is at present little known or regarded either in Europe or in America, it may hereafter become an object of curiosity. It will never be pretended that any persons employed in that service had interviews with the gods, or were in any degree under the inspiration of Heaven, more than those at work upon ships or houses, or laboring in merchandise or agriculture; it will forever be acknowledged that these governments were contrived merely by the use of reason and the senses. . . . The people were universally too enlightened to be imposed on by artifice; and their leaders, or more properly followers, were men of too much honor to attempt it. Thirteen governments thus founded on the natural authority of the people alone, without a pretence of miracle or mystery, and which are destined to spread over the northern part of that whole quarter of the globe, are a great point gained in favor of the rights of mankind. The experiment is made, and has completely succeeded; it can no longer be called in question, whether authority in magistrates and obedience of citizens can be grounded on reason, morality, and the Christian religion, without the monkery of priests, or the knavery of politicians. As the writer was personally acquainted with most of the gentlemen in each of the states, who had the principal share in the first draughts, the following work was really written to lay before the public a specimen of that kind of reading and reasoning which produced the American constitution. . . .

[300] M. Turgot is offended, because the customs of England are imitated in most of the new constitutions in America, without any particular motive. . . . What English customs has it retained which may with any propriety be called evil? M. Turgot has instanced only one, namely,—"that a body of representatives,

a council, and a governor, have been established, because there is in England a house of commons, a house of lords, and a king." It was not so much because the legislature in England consisted of three branches, that such a division of power was adopted by the states, as because their own assemblies had ever been so constituted. It was not so much from attachment by habit to such a plan of power that it was continued, as from conviction that it was founded in nature and reason. . . .

[379] As we have taken a cursory view of those countries in Europe where the government may be called, in any reasonable construction of the word, republican, let us now pause a few moments, and reflect upon what we have seen.

Among every people, and in every species of republics, we have constantly found *a first magistrate, a head, a chief*, under various denominations, indeed, and with different degrees of authority, with the title of stadtholder, burgomaster, avoyer, doge, gonfaloniero, president, syndic, mayor, alcalde, capitaneo, governor, or king; in every nation we have met with a distinguished officer. If there is no example, then, in any free government, any more than in those which are not free, of a society without a principal personage, we may fairly conclude that the body politic cannot subsist, any more than the animal body, without a head. If M. Turgot had made any discovery which had escaped the penetration of all the legislators and philosophers who have lived before him, he ought at least to have communicated it to the world for their improvement; but as he has never hinted at any such invention, we may safely conclude that he had none; and, therefore, that the Americans are not justly liable to censure for instituting *governors*.

In every form of government we have seen a *senate*, or *little council*, a composition, generally, of those officers of state who have the most experience and power, and of a few other members selected from the highest ranks and most illustrious reputations. On these lesser councils, with the first magistrate at their head, generally rests the principal burden of administration, a share in the legislative, as well as executive and judicial authority of government. The admission of such senates to a participation of these three kinds of power, has been generally observed to produce in the minds of their members an ardent aristocratical ambition, grasping equally at the prerogatives of the first magistrate, and

the privileges of the people, and ending in the nobility of a few families, and a tyrannical oligarchy. But in those states, where the senates have been debarred from all executive power, and confined to the legislative, they have been observed to be firm barriers against the encroachments of the crown, and often great supporters of the liberties of the people. The Americans, then, who have carefully confined their senates to the legislative power, have done wisely in adopting them.

We have seen, in every instance, another and a larger assembly, composed of the body of the people, in some little states; of representatives chosen by the people, in others; of members appointed by the senate, and supposed to represent the people, in a third sort; and of persons appointed by themselves or the senate, in certain aristocracies; to prevent them from becoming oligarchies. The Americans, then, whose assemblies are the most adequate, proportional, and equitable representations of the people, that are known in the world, will not be thought mistaken in appointing houses of representatives.

In every republic,—in the smallest and most popular, in the larger and more aristocratical, as well as in the largest and most monarchical,—we have observed a multitude of curious and ingenious inventions to balance, in their turn, all those powers, to check the passions peculiar to them, and to control them from rushing into those exorbitancies to which they are most addicted. The Americans will then be no longer censured for endeavoring to introduce an equilibrium, which is much more profoundly meditated, and much more effectual for the protection of the laws, than any we have seen, except in England. We may even question whether that is an exception.

In every country we have found a variety of *orders*, with very great distinctions. In America, there are different orders of *offices*, but none of *men*. Out of office, all men are of the same species, and of one blood; there is neither a greater nor a lesser nobility. Why, then, are the Americans accused of establishing different orders of men? To our inexpressible mortification, we must have observed, that the people have preserved a share of power, or an existence in the government, in no country out of England, except upon the tops of a few inaccessible mountains, among rocks and precipices, in territories so narrow that you may span them with a hand's breadth, where, living unenvied, in extreme poverty,

chiefly upon pasturage, destitute of manufactures and commerce, they still exhibit the most charming picture of life, and the most dignified character of human nature.

Wherever we have seen a territory somewhat larger, arts and sciences more cultivated, commerce flourishing, or even agriculture improved to any great degree, an aristocracy has arisen up in a course of time, consisting of a few rich and honorable families, who have united with each other against both the people and the first magistrate; who have wrested from the former, by art and by force, all their participation in the government; and have even inspired them with so mean an esteem of themselves, and so deep a veneration and strong attachment to their rulers, as to believe and confess them a superior order of beings. . . .

We have seen no one government in which is a distinct separation of the legislative from the executive power, and of the judicial from both, or in which any attempt has been made to balance these powers with one another, or to form an equilibrium between the one, the few, and the many, for the purpose of enacting and executing equal laws, by common consent, for the general interest, except in England.

Shall we conclude, from these melancholy observations, that human nature is incapable of liberty, that no honest equality can be preserved in society, and that such forcible causes are always at work as must reduce all men to a submission of despotism, monarchy, oligarchy, or aristocracy?

By no means. We have seen one of the first nations in Europe, possessed of ample and fertile territories at home and extensive dominions abroad, of a commerce with the whole world, immense wealth, and the greatest naval power which ever belonged to any nation, which has still preserved the power of the people by the equilibrium we are contending for, by the trial by jury, and by constantly refusing a standing army. The people of England alone, by preserving their share in the legislature, at the expense of the blood of heroes and patriots, have enabled their king to curb the nobility, without giving him a standing army.

After all, let us compare every constitution we have seen with those of the United States of America, and we shall have no reason to blush for our country. On the contrary, we shall feel the strongest motives to fall upon our knees, in gratitude to heaven for having been graciously pleased to give us birth and education

in that country, and for having destined us to live under her laws! We shall have reason to exult, if we make our comparison with England and the English constitution. Our people are undoubtedly sovereign; all the landed and other property is in the hands of the citizens; not only their representatives, but their senators and governors, are annually chosen; there are no hereditary titles, honors, offices, or distinctions; the legislative, executive, and judicial powers are carefully separated from each other; the powers of the one, the few, and the many are nicely balanced in the legislatures; trials by jury are preserved in all their glory, and there is no standing army; the *habeas corpus* is in full force; the press is the most free in the world. Where all these circumstances take place, it is unnecessary to add that the laws alone can govern. . . .

[579] By the authorities and examples already recited, you will be convinced that three branches of power have an unalterable foundation in nature; that they exist in every society natural and artificial; and that if all of them are not acknowledged in any constitution of government, it will be found to be imperfect, unstable, and soon enslaved; that the legislative and executive authorities are naturally distinct; and that liberty and the laws depend entirely on a separation of them in the frame of government; that the legislative power is naturally and necessarily sovereign and supreme over the executive; and, therefore, that the latter must be made an essential branch of the former, even with a negative, or it will not be able to defend itself, but will be soon invaded, undermined, attacked, or in some way or other totally ruined and annihilated by the former. This is applicable to every state in America, in its individual capacity; but is it equally applicable to the United States in their federal capacity?

The people of America and their delegates in congress were of opinion, that a single assembly was every way adequate to the management of all their federal concerns; and with very good reason, because congress is not a legislative assembly, nor a representative assembly, but only a diplomatic assembly.[1] A single

[1] This sentence drew from Mr. Jefferson a remonstrating comment. In a letter dated Paris, 23 February, 1787, occurs the following passage, which, in view of the subsequent history of both the parties, is worthy of record.

"I have read your book with infinite satisfaction and improvement. It will do great good in America. Its learning and its good sense will, I hope, make it an institute for our politicians, old as well as young. There is one opinion in it, however, which I will ask you to reconsider, because it appears to me not entirely accurate, and not likely to do good. 'Congress is not a legislative, but a diplomatic assembly.'

council has been found to answer the purposes of confederacies very well. But in all such cases the deputies are responsible to the states; their authority is clearly ascertained; and the states, in their separate capacities, are the checks. These are able to form an effectual balance, and at all times to control their delegates. The security against the dangers of this kind of government will depend upon the accuracy and decision with which the governments of the separate states have their own orders arranged and balanced. . . .

According to M. Turgot's idea of a perfect commonwealth, a single assembly is to be possessed of all authority, legislative, executive, and judicial. It will be a proper conclusion of all our speculations upon this, the most interesting subject which can employ the thoughts of men, to consider in what manner such an assembly will conduct its deliberations and exert its power. The executive power is properly the government; the laws are a dead letter until an administration begins to carry them into execution. Let us begin, then, with this. If there is an army to raise, this single assembly is to appoint all its officers. The man of the most ample fortune, the most honorable descent, the greatest abilities, especially if there is any one among them who has had experience, rendered important services, and acquired fame in war, will be chosen general. This event is a great point gained by the aristocracy; and a great advance towards the selection of one, in case of convulsions and confusions, for monarchy. The general has vast influence, of course, with the whole nation, and especially with the officers of his army; whose articles of war, and whose habits, both of obedience and command, establish a system of subordination of which he is the centre, and produce an attachment that never wears out. The general, even without being sensible of it, will naturally fall in with the views of the aristocratical body, in promoting men of family, property, and abilities; and indeed, in general, it will be his duty to do this, as such are, undoubtedly, in general, the fittest for the service. His whole corps of officers will grow habitually to respect such only, or at least

Separating into parts the whole sovereignty of our states, some of these parts are yielded to congress. Upon these I should think them both legislative and executive, and that they could have been judiciary also, had not the confederation required them for certain purposes to appoint a judiciary. It has accordingly been the decision of our courts, that the confederation is a part of the law of the land, and superior in authority to the ordinary laws, because it cannot be altered by the legislature of any one state. I doubt whether they are at all a diplomatic assembly."

chiefly, and, it must be added, because experience proves it, and the truth requires it to be mentioned, to entertain some degree of contempt for the rest of the people, as "rank and file." The general's recommendation will have great weight in the assembly, and will in time be given chiefly, if not wholly, to men who are either of the aristocratical body themselves, or at least recommended by such as are so. All the other officers of the army are to be appointed by this assembly; and we must suppose that all the general officers and field officers will be of patrician families, because each candidate will be unknown to nine tenths of the assembly. He comes from a part of the state which a vast majority of the members of the assembly do not particularly represent and are unacquainted with; they must, therefore, take his character upon trust from his patron in the house, some member who is his neighbor, and who, perhaps, owes his election to him or his particular friends. Here is an endless source of debate and delay. When there are two or more candidates for a commission, and there will generally be several, how shall an assembly of five hundred or one hundred men, collected from all the most distant parts of a large state, become informed of the merits and pretensions of each candidate? It can only be done in public or in private. If in public, it exposes the characters of the candidates to a public discussion, which few men can bear; it consumes time without end; and it will frequently happen that the time of the whole assembly shall be wasted, and all the public affairs delayed, for days and weeks, in deliberating and debating, affirming and denying, contradicting and proving, in the appointment of a single officer; and, after all, he who has friends of the most influence in the house, who will be generally of the aristocratical complexion, will be preferred. It is moderate to say, that the loss of time and delay of business will be a greater burthen to the state than the whole support of a governor and council.

If there is a navy, the same process must be gone through respecting admirals, captains, and all other officers. All the officers of revenue, police, justice, must be appointed in the same way. Ambassadors, consuls, agents to foreign countries, must be appointed, too, by vote of assembly. This branch of business alone would fill up the whole year, and be more than could be done. . . .

But this is not all. The army, the navy, revenue, excise, cus-

toms, police, justice, and all foreign ministers, must be gentlemen, that is to say, friends and connections of the rich, well-born and well-educated members of the house; or, if they are not, the community will be filled with slander, suspicion, and ridicule against them, as ill-bred, ignorant, and in all respects unqualified for their trusts; and the plebeians themselves will be as ready as any to join in the cry, and run down their characters. In the second place, there never was yet a people who must not have somebody or something to represent the dignity of the state, the majesty of the people, call it what you will,—a doge, an avoyer, an archon, a president, a consul, a syndic; this becomes at once an object of ambition and dispute, and, in time, of division, faction, sedition, and rebellion.

The next inquiry is, concerning the administration of justice. Shall every criminal be brought before this assembly and tried? shall he be there accused before five hundred men? witnesses introduced, counsel heard? This again would take up more than the whole year; and no man, after all, would consider his life, liberty, or property, safe in such a tribunal. . . .

Shall the assembly appoint a governor or president, and give him all the executive power? Why should not the people at large appoint him? Giving this power to the assembly will open a wider door to intrigue for the place; and the aristocratical families will be sure, nine times in ten, to carry their choice in this way; and, what is much worse, the first magistrate will be considered as dependent on every obscure member of the house, but in reality he will be dependent only on a dozen or a score, perhaps on two or three, of the whole. He will be liable to daily motions, debates, and votes of censure. Instead of thinking of his duty to the people at large, he will confine his attention chiefly to the assembly, and believe, that if he can satisfy them, or a majority of them, he has done his duty. . . .

But we have not yet considered how the legislative power is to be exercised in this single assembly. Is there to be a constitution? Who are to compose it? The assembly itself, or a convention called for that purpose? In either case, whatever rules are agreed on for the preservation of the lives, liberties, properties, and characters of the citizens, what is to hinder this assembly from transgressing the bounds which they have prescribed to themselves, or which the convention has ordained for them? The convention

has published its code and is no more. Shall a new convention be called, to determine every question which arises concerning a violation of the constitution? This would require that the convention should sit whenever the assembly sits, and consider and determine every question which is agitated in it. This is the very thing we contend for, namely,—that there may be two assemblies; one to divide, and the other to choose. Grant me this, and I am satisfied; provided you will confine both the convention and assembly to legislation, and give the whole executive power to another body. I had almost ventured to propose a third assembly for the executive power; but the unity, the secrecy, the dispatch of one man has no equal; and the executive power should be watched by all men; the attention of the whole nation should be fixed upon one point, and the blame and censure, as well as the impeachments and vengeance for abuses of this power, should be directed solely to the ministers of one man. But to pursue our single assembly. The first year, or the first seven years, they may be moderate; especially in dangerous times, and while an exiled royal family, or exiled patricians or nobles, are living, and may return; or while the people's passions are alive, and their attention awake, from the fresh remembrance of danger and distress. But when these transitory causes pass away, as there is an affection and confidence between the people and their representatives, suppose the latter begin to make distinctions, by making exceptions of themselves in the laws. They may frank letters; they are exempted from arrests; they can privilege servants; one little distinction after another, in time makes up a large sum. Some few of the people will complain; but the majority, loving their representatives will acquiesce. Presently they are exempted from taxes. Then their duration is too short; from annual they become biennial, triennial, septennial, for life; and at length, instead of applying to constituents to fill up vacancies, the assembly takes it upon itself, or gives it to their president. In the mean time, wars are conducted by heroes to triumph and conquest, negotiations are carried on with success, commerce flourishes, the nation is prosperous; the citizens are flattered, vain, proud of their felicity, envied by others. It would be the basest, the most odious ingratitude, at least it would be so represented, to find fault with their rulers. In a word, as long as half a score of capital characters agree, they will gradually form the house and

the nation into a system of subordination and dependence to themselves, and govern all at their discretion—a simple aristocracy or oligarchy in effect, though a simple democracy in name. . . .

But shall the people at large elect a governor and council annually to manage the executive power, and a single assembly to have the whole legislative? In this case, the executive power, instead of being independent, will be the instrument of a few leading members of the house; because the executive power, being an object of jealousy and envy to the people, and the legislative an object of their confidence and affection, the latter will always be able to render the former unpopular, and undermine its influence. But if the people for a time support an executive disagreeable to the leaders in the legislative, the constitution will be disregarded, and the nation will be divided between the two bodies, and each must at last have an army to decide the question. A constitution consisting of an executive in one single assembly, and a legislative in another, is already composed of two armies in battle array; and nothing is wanting but the word of command to begin the combat.

In the present state of society and manners in America, with a people living chiefly by agriculture, in small numbers, sprinkled over large tracts of land, they are not subject to those panics and transports, those contagions of madness and folly, which are seen in countries where large numbers live in small places, in daily fear of perishing for want. We know, therefore, that the people can live and increase under almost any kind of government, or without any government at all. But it is of great importance to begin well; misarrangements now made, will have great, extensive, and distant consequences; and we are now employed, how little soever we may think of it, in making establishments which will affect the happiness of a hundred millions of inhabitants at a time, in a period not very distant. All nations, under all governments, must have parties; the great secret is to control them. There are but two ways, either by a monarchy and standing army, or by a balance in the constitution. Where the people have a voice, and there is no balance, there will be everlasting fluctuations, revolutions, and horrors, until a standing army, with a general at its head, commands the peace, or the necessity of an equilibrium is made appear (sic) to all, and is adopted by all.

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CHAPTER IV

THE FRAMING AND RATIFICATION OF THE FEDERAL CONSTITUTION

INTRODUCTION

From 1775 to 1781 the Second Continental Congress governed without a constitution and with a make-shift organization. The Articles of Confederation and Perpetual Union were agreed to by the Congress in 1777 but not finally ratified by the states until 1781. Even before this constitution went into effect there was a considerable amount of dissatisfaction with its principles, and that feeling developed rapidly after 1781. The weakness of the central government, state jealousies of each other and of the federal government, intensified by the period of economic unrest which followed the Revolution, resulted in an increasing desire for a stronger political system. During the next few years many private letters and a number of pamphlets, notably those of Peletiah and Noah Webster, show how widespread was the belief that stability, prosperity, and the respect of other nations could be secured only by radical changes in the Articles of Confederation.

At the suggestion of Madison the Virginia legislature proposed an interstate convention at Annapolis in September, 1786, to adopt a uniform system of commercial regulations. Delegates from five states appeared. Hamilton persuaded his colleagues to propose a convention of all the states to consider the broader problem of securing a more adequate central government. Several states proceeded to appoint delegates to such a convention, and, in February, 1787, the Congress issued a call for a convention, its function to be that of revising the Articles of Confederation in such a way as to

render them adequate to the exigencies of government and the perpetuation of the union. The credentials and instructions of the twelve states which sent delegates to the convention are of the same limiting nature.

Both before and since the utterance of Gladstone's famous aphorism that "the American constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man," it has been many times pointed out that this constitution is the work of a long evolutionary process. To be sure the constitution was written during a period of four months and few people would care to deny that it is a truly remarkable document, but the fifty-five men who composed the convention had experienced an extensive and unusually valuable course of training under colonial, state, and federal governments. Three-fourths of them had served in congress; virtually all of them had had some experience in the offices of colonial and state governments; many of them had had a share in the drafting of state constitutions and of the Articles of Confederation; a remarkably large number were well read in the works of English and Continental commentators upon political institutions. In short, the federal constitution is the product of years, and even generations of political experience, quite as much as it is the work of a group of distinguished men. A reading of the debates will quickly convince anyone that the constitution has no single author, but it will also lead to a profound admiration for the genius of James Madison. Junior to most of the members in both age and political experience, with almost no oratorical gifts, his earnestness, his learning, and his acute judgment enabled him to exercise a greater influence upon the proceedings of the convention than any other member.

One of the first acts of the convention was to disregard the instructions of Congress and the state legislatures. Instead of proceeding to discuss amendments to the Articles of Confederation the delegates, or, to be more accurate, those who arrived for the first meetings, voted to prepare a new constitution for a "national" government. For sixteen weeks they

debated the difficult problems produced by the many conflicts of interest and ideals. The document finally agreed upon in September is indeed very different from the plan, prepared mainly by Madison and presented to the convention by Randolph, with which they started. A few members seemed to be quite content with its provisions; most of them believed it to be a marked improvement over the Articles of Confederation and the best constitution possible under the circumstances; seven refused to sign and urged their states not to ratify. It was transmitted to Congress with the recommendation that it be sent to the states to be ratified by conventions elected especially for that purpose.

When the proposed constitution was published it met with more attention and interest than is usually the case with changes in the fundamental law. Four of the smaller states ratified it almost immediately and with few dissenting votes. Pennsylvania, where there was strong but unorganized opposition, followed shortly thereafter. In Massachusetts, Virginia, and New York, particularly the two latter, the contest was keenest and the margin of success most slender. North Carolina and Rhode Island did not ratify until after the new government had been established.

To those who favored the proposed constitution, the Federalists, the opposition presented a grave menance. But later generations are indebted not a little to the Anti-Federalists for the great body of illuminating discussion produced as a result of their antagonism to the new plan. In the history of American political theory the literature of the two years, 1787–88, is second in importance only to that of the longer and preceding period, 1764–80. Thousands of letters in the newspapers and hundreds of pamphlets indicate the amount of interest aroused by the controversy. The quality of many of these productions is not high, but, on the other hand, there are some which are deservedly considered classics of political argument and analysis. Speeches in a number of the ratifying conventions are no less worthy of study. Certainly no constitution up to that time, and few since, had

been subjected to such critical examination and received such able defence.

In order to secure ratification the Federalists in the Massachusetts convention agreed to a list of proposed amendments to accompany its ratification. Six other states followed this example. Fortunately, the ratifications were not conditioned upon the acceptance of the amendments. The first Congress under the constitution did, however, submit to the state legislatures twelve amendments based upon these proposals. Ten of them were ratified.

DEBATES IN THE FEDERAL CONVENTION [1]

May–September, 1787

The sessions of the Federal Convention were secret and no record of the debates was kept, but several members made more or less careful notes of the speeches. By far the most complete of these unofficial records is that of James Madison, and all of the selections given here, with the exception of Hamilton's speech of June 19 which is taken from Yates's *Secret Proceedings*, are from his notes. The arrangement of these extracts in topical rather than the usual chronological order is the result of a conviction that the former arrangement affords a much clearer insight into the problems confronting the Convention and the political theories entertained by its members. Dates of all of the speeches are given in brackets in order that the whole of any discussion from which a part is here reprinted may easily be found in any of the standard editions of the debates.

[1] The most convenient complete compilation of the available material concerning the Convention is *Records of the Federal Convention*, edited by Max Farrand, 3 vols., New Haven: Yale Press, 1911. More cumbersome but cheaper is the *Documentary History of the Constitution;* 5 vols., Washington: Government Printing Office, 1894–1905. A more recent compilation issued by the Government Printing Office is *Documents on the Formation of The Union* (1924). *Debates in the Federal Convention of 1787*, edited by Gaillard Hunt and James Brown Scott; New York: Oxford University Press, 1920, is an excellent one volume edition of Madison's notes and certain other material, but it does not include Yates's notes. Robert Yates, *Secret Proceedings and Debates* was published in Albany in 1821, and reprinted by the Government Printing Office in 1909. Madison's notes are also to be found in his *Writings* edited by Gaillard Hunt (vols. III and IV). Jonathan Elliot's *Debates in the several State Conventions*, beginning with the edition of 1836–45 (5 vols.) contains both Madison's and Yates's notes, together with other useful material. The 1861 and later editions are preferable.

THE PLANS OF GOVERNMENT

[May 29] Mr. RANDOLPH then opened the main business:—

He expressed his regret that it should fall to him, rather than those who were of longer standing in life and political experience, to open the great subject of their mission. But as the Convention had originated from Virginia, and his colleagues supposed that some proposition was expected from them, they had imposed this task on him.

He then commented on the difficulty of the crisis, and the necessity of preventing the fulfilment of the prophecies of the American downfall.

He observed, that, in revising the federal system, we ought to inquire, first, into the properties which such a government ought to possess; secondly, the defects of the Confederation; thirdly, the danger of our situation; and, fourthly, the remedy.

1. The character of such a government ought to secure, first, against foreign invasion; secondly, against dissensions between members of the Union, or seditions in particular states; thirdly, to procure to the several states various blessings, of which an isolated situation was incapable; fourthly, it should be able to defend itself against encroachment; and, fifthly, to be paramount to the state constitutions.

2. In speaking of the defects of the Confederation, he professed a high respect for its authors, and considered them as having done all that patriots could do, in the then infancy of the science of constitutions and of confederacies; when the inefficiency of requisitions was unknown—no commercial discord had arisen among any states—no rebellion had appeared, as in Massachusetts—foreign debts had not become urgent—the havoc of paper money had not been foreseen—treaties had not been violated; and perhaps nothing better could be obtained, from the jealousy of the states with regard to their sovereignty.

He then proceeded to enumerate the defects:—

First, that the Confederation procured no security against foreign invasion; Congress not being permitted to prevent a war, nor to support it by their own authority. Of this he cited many examples; most of which tended to show that they could not cause infractions of treaties, or of the law of nations, to be punished; that particular states might, by their conduct, provoke

war without control; and that, neither militia nor drafts being fit for defence on such occasions, enlistments only could be successful, and these could not be executed without money.

Secondly, that the federal government could not check the quarrel between states, nor a rebellion in any, not having constitutional power, nor means, to interpose according to the exigency.

Thirdly, that there were many advantages which the United States might acquire, which were not attainable under the Confederation; such as a productive impost, counteraction of the commercial regulations of other nations, pushing of commerce *ad libitum*, &c., &c.

Fourthly, that the federal government could not defend itself against encroachments from the states.

Fifthly, that it was not even paramount to the state constitutions, ratified as it was in many of the states.

3. He next reviewed the danger of our situation; and appealed to the sense of the best friends of the United States—to the prospect of anarchy from the laxity of government everywhere—and to other considerations.

4. He then proceeded to the remedy; the basis of which, he said, must be the republican principle.

He proposed, as conformable to his ideas, the following resolutions, which he explained one by one.

"1. Resolved, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, 'common defence, security of liberty, and general welfare.'

"2. Resolved, therefore, that the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

"3. Resolved, that the national legislature ought to consist of two branches.

"4. Resolved, that the members of the first branch of the national legislature ought to be elected by the people of the several states every for the term of ; to be of the age of years at least; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service to be ineligible to any office established by a particular state, or under the authority of the United States, except those

peculiarly belonging to the functions of the first branch, during the term of service, and for the space of after its expiration; to be incapable of reëlection for the space of after the expiration of their term of service, and to be subject to recall.

"5. Resolved, that the members of the second branch of the national legislature ought to be elected, by those of the first, out of a proper number of persons nominated by the individual legislatures; to be of the age of years at least; to hold their offices for a term sufficient to insure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and for the space of after the expiration thereof.

"6. Resolved, that each branch ought to possess the right of originating acts; that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states contravening, in the opinion of the national legislature, the Articles of Union, or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof.

"7. Resolved, that a national executive be instituted; to be chosen by the national legislature for the term of ; to receive punctually, at stated times, a fixed compensation for services rendered, in which no increase or diminution shall be made so as to affect the magistracy existing at the time of increase or diminution; and to be ineligible a second time; and that, besides, a general authority to execute the national laws, it ought to enjoy the executive rights vested in Congress by the Confederation.

"8. Resolved, that the executive, and a convenient number of the national judiciary, ought to compose a council of revision, with authority to examine every act of the national legislature, before it shall operate, and every act of a particular legislature

before a negative thereon shall be final; and that the dissent of the said council shall amount to a rejection, unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by of the members of each branch.

"9. Resolved, that a national judiciary be established; to consist of one or more supreme tribunals, and of inferior tribunals; to be chosen by the national legislature; to hold their offices during good behavior, and to receive punctually, at stated times, fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals shall be to hear and determine, in the first instance, and of the supreme tribunal to hear and determine, in the *dernier resort*, all piracies and felonies on the high seas; captures from an enemy; cases in which foreigners, or citizens of other states, applying to such jurisdictions, may be interested; or which respect the collection of the national revenue, impeachments of any national officers, and questions which may involve the national peace and harmony.

"10. Resolved, that provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

"11. Resolved, that a republican government, and the territory of each state, except in the instance of a voluntary junction of government and territory, ought to be guaranteed by the United States to each state.

"12. Resolved, that provision ought to be made for the continuance of Congress, and their authorities and privileges, until a given day after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.

"13. Resolved, that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary; and that the assent of the national legislature ought not to be required thereto.

"14. Resolved, that the legislative, executive, and judiciary powers, within the several states, ought to be bound by oath to support the Articles of Union.

"15. Resolved, that the amendments which shall be offered

to the Confederation by the Convention, ought, at a proper time or times, after the appropriation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people, to consider and decide thereon."

He concluded with an exhortation, not to suffer the present opportunity of establishing general peace, harmony, happiness, and liberty, in the United States, to pass away unimproved.

It was then resolved, that the House will to-morrow resolve itself into a committee of the whole House, to consider of the state of the American Union; and that the propositions moved by Mr. RANDOLPH be referred to the said committee.

Mr. CHARLES PINCKNEY laid before the House the draft of a federal government which he had prepared, to be agreed upon between the free and independent States of America. . . .

[June 16] Mr. PATTERSON said, as he had on a former occasion given his sentiments on the plan proposed by Mr. Randolph, he would now, avoiding repetition as much as possible, give his reasons in favor of that proposed by himself. He preferred it because it accorded,—first, with the powers of the convention; secondly, with the sentiments of the people. If the Confederacy was radically wrong, let us return to our states, and obtain larger powers, not assume them ourselves. I came here not to speak my own sentiments, but the sentiments of those who sent me. Our object is not such a government as may be best in itself, but such a one as our constituents have authorized us to prepare, and as they will approve. If we argue the matter on the supposition that no confederacy at present exists, it cannot be denied that all the states stand on the footing of equal sovereignty. All, therefore, must concur before any can be bound. If a proportional representation be right, why do we not vote so here? If we argue on the fact that a federal compact actually exists, and consult the articles of it, we still find an equal sovereignty to be the basis of it. He reads the fifth Article of the Confederation, giving each state a vote; and the thirteenth, declaring that no alteration shall be made without unanimous consent. This is the nature of all treaties. What is unanimously done, must be unanimously undone. It was observed, [by Mr. Wilson,] that the larger states gave up the point, not because it was right, but because the circumstances of the moment urged the concession. Be it so. Are

they for that reason at liberty to take it back? Can the donor resume his gift without the consent of the donee? This doctrine may be convenient, but it is a doctrine that will sacrifice the lesser states. The larger states acceded readily to the Confederacy. It was the small ones that came in reluctantly and slowly. New Jersey and Maryland were the two last; the former objecting to the want of power in Congress over trade; both of them to the want of power to appropriate the vacant territory to the benefit of the whole. If the sovereignty of the states is to be maintained, the representatives must be drawn immediately from the states, not from the people; and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty is that of throwing the states into hotchpot. To say that this is impracticable, will not make it so. Let it be tried, and we shall see whether the citizens of Massachusetts, Pennsylvania, and Virginia accede to it. It will be objected, that coercion will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the states, or from the individuals; and, according to his plan, it may be exerted on individuals as well as according to that of Mr. Randolph. A distinct executive and judiciary also were equally provided by his plan. It is urged, that two branches in the legislature are necessary. Why? For the purpose of a check. But the reason for the precaution is not applicable to this case. Within a particular state, where party heats prevail, such a check may be necessary. In such a body as Congress, it is less necessary; and, besides, the delegations of the different states are checks on each other. Do the people at large complain of Congress? No. What they wish is, that Congress may have more power. If the power now proposed be not enough, the people hereafter will make additions to it. With proper powers Congress will act with more energy and wisdom than the proposed national legislature; being fewer in number, and more secreted and refined by the mode of election. The plan of Mr. Randolph will also be enormously expensive. Allowing Georgia and Delaware two representatives each in the popular branch, the aggregate number of that branch will be one hundred and eighty. Add to it half as many for the other branch, and you have two hundred and seventy members, coming once, at least, a year, from the most distant as well as the most central

parts of the republic. In the present deranged state of our finances, can so expensive a system be seriously thought of? By enlarging the powers of Congress, the greatest part of this expense will be saved, and all purposes will be answered. At least, a trial ought to be made. . . .

[June 19] Mr. HAMILTON.—To deliver my sentiments on so important a subject, when the first characters in the union have gone before me, inspires me with the greatest diffidence, especially when my own ideas are so materially dissimilar to the plans now before the committee—My situation is disagreeable, but it would be criminal not to come forward on a question of such magnitude. I have well considered the subject, and am convinced that no amendment of the confederation can answer the purpose of a good government, so long as state sovereignties do, in any shape, exist; and I have great doubts whether a national government on the Virginia plan can be made effectual. What is federal? An association of several independent states into one. How or in what manner this association is formed, is not so clearly distinguishable. We find the diet of Germany has in some instances the power of legislation on individuals. We find the United States of America have it in an extensive degree in the cases of piracies.

Let us now review the powers with which we are invested. We are appointed for the *sole* and *express* purpose of revising the confederation, and to *alter* or *amend* it, so as to render it effectual for the purposes of a good government. Those who suppose it must be federal, lay great stress on the terms *sole* and *express*, as if these words intended a confinement to a federal government; when the manifest import is no more than that the institution of a good government must be the *sole* and *express* object of your deliberations. Nor can we suppose an annihilation of our powers by forming a national government, as many of the states have made in their constitutions no provision for any alteration; and thus much I can say for the state I have the honor to represent, that when our credentials were under consideration in the senate, some members were for inserting a restriction in the powers, to prevent an encroachment on the constitution: it was answered by others, and thereupon the resolve carried on the credentials, that it might abridge some of the constitutional powers of the state, and that possibly in the formation of a new union it would be found necessary. This appears reasonable, and therefore leaves

us at liberty to form such a national government as we think best adapted for the good of the whole. I have therefore no difficulty as to the extent of our powers, nor do I feel myself restrained in the exercise of my judgment under them. We can only propose and recommend—the power of ratifying or rejecting is still in the states. But on this great question I am still greatly embarrassed. I have before observed my apprehension of the inefficacy of either plan, and I have great doubts whether a more energetic government can pervade this wide and extensive country. I shall now show that both plans are materially defective.

1. A good government ought to be constant, and ought to contain an active principle. 2. Utility and necessity. 3. An habitual sense of obligation. 4. Force. 5. Influence.

I hold it, that different societies have all different views and interests to pursue, and always prefer local to general concerns. For example: New-York legislature made an external compliance lately to a requisition of congress; but do they not at the same time counteract their compliance by gratifying the local objects of the state so as to defeat their concession? And this will ever be the case. Men always love power, and states will prefer their particular concerns to the general welfare; and as the states become large and important, will they not be less attentive to the general government? What in process of time will Virginia be? She contains now half a million of inhabitants—in twenty-five years she will double the number. Feeling her own weight and importance, must she not become indifferent to the concerns of the union? And where, in such a situation, will be found national attachment to the general government?

By *force,* I mean the *coercion* of law and the coercion of arms. Will this remark apply to the power intended to be vested in the government to be instituted by their plan? A delinquent must be compelled to obedience by force of arms. How is this to be done? If you are unsuccessful, a dissolution of your government must be the consequence; and in that case the individual legislature will reassume their powers; nay, will not the interest of the states be thrown into the state governments?

By *influence,* I mean the regular weight and support it will receive from those who will find it their interest to support a government intended to preserve the peace and happiness of the community of the whole. The state governments, by either plan,

will exert the means to counteract it. They have their state judges and militia all combined to support their state interests; and these will be influenced to oppose a national government. Either plan is therefore precarious. The national government cannot long exist when opposed by such a weighty rival. The experience of ancient and modern confederacies evince this point, and throw considerable light on the subject. The amphyctionic council of Greece had a right to require of its members troops, money and the force of the country. Were they obeyed in the exercise of those powers? Could they preserve the peace of the greater states and republics? or where were they obeyed? History shows that their decrees were disregarded, and that the stronger states, regardless of their power, gave law to the lesser.

Let us examine the federal institution of Germany. It was instituted upon the laudable principle of securing the independency of the several states of which it was composed, and to protect them against foreign invasion. Has it answered these good intentions? Do we not see that their councils are weak and distracted, and that it cannot prevent the wars and confusions which the respective electors carry on against each other? The Swiss cantons, or the Helvetic union, are equally inefficient.

Such are the lessons which the experience of others affords us, and from whence results the evident conclusion that all federal governments are weak and distracted. To avoid the evils deducible from these observations, we must establish a general and national government, completely sovereign, and annihilate the state distinctions and state operations; and unless we do this, no good purpose can be answered. What does the Jersey plan propose? It surely has not this for its object. By this we grant the regulation of trade and a more effectual collection of the revenue, and some partial duties. These, at five or ten per cent, would only perhaps amount to a fund to discharge the debt of the corporation.

Let us take a review of the variety of important objects, which must necessarily engage the attention of a national government. You have to protect your rights against Canada on the north, Spain on the south, and your western frontier against the savages. You have to adopt necessary plans for the settlement of your frontiers, and to institute the mode in which settlements and good government are to be made.

How is the expense of supporting and regulating these important matters to be defrayed? By requisition on the states, according to the Jersey plan? Will this do it? We have already found it ineffectual. Let one state prove delinquent, and it will encourage others to follow the example; and thus the whole will fail. And what is the standard to quota among the states their respective proportions? Can lands be the standard? How would that apply between Russia and Holland? Compare Pennsylvania with North-Carolina, or Connecticut with New-York. Does not commerce or industry in the one or other make a great disparity between these different countries, and may not the comparative value of the states from these circumstances, make an unequal disproportion when the data is numbers? I therefore conclude that either system would ultimately destroy the confederation, or any other government which is established on such fallacious principles. Perhaps imposts, taxes on specific articles, would produce a more equal system of drawing a revenue.

Another objection against the Jersey plan is, the unequal representation. Can the great states consent to this? If they did it would eventually work its own destruction. How are forces to be raised by the Jersey plan? By quotas? Will the states comply with the requisition? As much as they will with the taxes.

Examine the present confederation, and it is evident they can raise no troops nor equip vessels before war is actually declared. They cannot therefore take any preparatory measure before an enemy is at your door. How unwise and inadequate their powers! and this must ever be the case when you attempt to define powers. —Something will always be wanting. Congress, by being annually elected, and subject to recall, will ever come with the prejudices of their states rather than the good of the union. Add therefore additional powers to a body thus organized, and you establish a *sovereignty* of the worst kind, consisting of a single body. Where are the checks? None. They must either prevail over the state governments, or the prevalence of the state government must end in their dissolution. This is a conclusive objection to the Jersey plan.

Such are the insuperable objections to both plans: and what is to be done on this occasion? I confess I am at a loss. I foresee the difficulty on a consolidated plan of drawing a representation from so extensive a continent to one place. What can be the in-

ducements for gentlemen to come 600 miles to a national legislature? The expense would at least amount to £100,000. This however can be no conclusive objection if it eventuates in an extinction of state governments. The burthen of the latter would be saved, and the expense then would not be great. State distinctions would be found unnecessary, and yet I confess, to carry government to the extremities, the state governments reduced to corporations, and with very limited powers, might be necessary, and the expense of the national government become less burthensome.

Yet, I confess, I see great difficulty of drawing forth a good representation. What, for example, will be the inducements for gentlemen of fortune and abilities to leave their houses and business to attend annually and long? It cannot be the wages; for these, I presume, must be small. Will not the power, therefore, be thrown into the hands of the demagogue or middling politician, who, for the sake of a small stipend and the hopes of advancement, will offer himself as a candidate, and the real men of weight and influence, by remaining at home, add strength to the state governments? I am at a loss to know what must be done—I despair that a republican form of government can remove the difficulties. Whatever may be my opinion, I would hold it however unwise to change that form of government. I believe the British government forms the best model the world ever produced, and such has been its progress in the minds of the many, that this truth gradually gains ground. This government has for its object *public strength* and *individual security*. It is said with us to be unattainable. If it was once formed it would maintain itself. All communities divide themselves into the few and the many. The first are the rich and well born, the other the mass of the people. The voice of the people has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in the government. They will check the unsteadiness of the second, and as they cannot receive any advantage by a change, they therefore will ever maintain good government. Can a democratic assembly, who annually revolves in the mass of the people, be supposed steadily to pursue the public good? Nothing but a permanent body can check the

imprudence of democracy. Their turbulent and uncontrouling disposition requires checks. The senate of New-York, although chosen for four years, we have found to be inefficient. Will, on the Virginia plan, a continuance of seven years do it? It is admitted that you cannot have a good executive upon a democratic plan. See the excellency of the British executive—He is placed above temptation—He can have no distinct interests from the public welfare. Nothing short of such an executive can be efficient. The weak side of a republican government is the danger of foreign influence. This is unavoidable, unless it is so constructed as to bring forward its first characters in its support. I am therefore for a general government, yet would wish to go the full length of republican principles.

Let one body of the legislature be constituted during good behaviour or life.

Let one executive be appointed who dares execute his powers.

It may be asked is this a republican system? It is strictly so, as long as they remain elective.

And let me observe, that an executive is less dangerous to the liberties of the people when in office during life, than for seven years.

It may be said this constitutes an elective monarchy? Pray what is a monarchy? May not the governors of the respective states be considered in that light? But by making the executive subject to impeachment, the term monarchy cannot apply. These elective monarchs have produced tumults in Rome, and are equally dangerous to peace in Poland; but this cannot apply to the mode in which I would propose the election. Let electors be appointed in each of the states to elect the executive—[*Here Mr. H. produced his plan, a copy whereof is hereunto annexed*] to consist of two branches—and I would give them the unlimited power of passing *all laws* without exception. The assembly to be elected for three years by the people in districts—the senate to be elected by electors to be chosen for that purpose by the people, and to remain in office during life. The executive to have the power of negativing all laws—to make war or peace—with the advice of the senate—to make treaties with their advice, but to have the sole direction of all military operations, and to send ambassadors and appoint all military officers, and to pardon all offenders, treason excepted, unless by advice of the senate. On

his death or removal, the president of the senate to officiate, with the same powers, until another is elected. Supreme judicial officers to be appointed by the executive and the senate. The legislature to appoint courts in each state, so as to make the state governments unnecessary to it.

All state laws to be absolutely void which contravene the general laws. An officer to be appointed in each state to have a negative on all state laws. All the militia and the appointment of officers to be under the national government.

I confess that this plan and that from Virginia are very remote from the idea of the people. Perhaps the Jersey plan is nearest their expectation. But the people are gradually ripening in their opinions of government—they begin to be tired of an excess of democracy—and what even is the Virginia plan, but *pork still, with a little change of the sauce*. . . .

RIGHTS AND POWERS OF THE STATES

[June 9] Mr. PATTERSON considered the proposition for a proportional representation as striking at the existence of the lesser states. He would premise, however, to an investigation of this question, some remarks on the nature, structure, and powers of the Convention. The Convention, he said, was formed in pursuance of an act of Congress; that this act was recited in several of the commissions, particularly that of Massachusetts, which he required to be read; that the amendment of the Confederacy was the object of all the laws and commissions on the subject; that the Articles of the Confederation were therefore the proper basis of all the proceedings of the Convention; that we ought to keep within its limits, or we should be charged by our constituents with usurpation; that the people of America were sharp-sighted, and not to be deceived. But the commissions under which we acted were not only the measure of our power, they denoted also the sentiments of the states on the subject of our deliberation. The idea of a national government, as contradistinguished from a federal one, never entered into the mind of any of them; and to the public mind we must accommodate ourselves. We have no power to go beyond the federal scheme; and if we had, the people are not ripe for any other. We must follow the people; the people

will not follow us. The *proposition* could not be maintained, whether considered in reference to us as a nation, or as a confederacy. A confederacy supposes sovereignty in the members composing it, and sovereignty supposes equality. If we are to be considered as a nation, all state distinctions must be abolished, the whole must be thrown into hotch-pot, and when an equal division is made, then there may be fairly an equality of representation. He held up Virginia, Massachusetts, and Pennsylvania, as the three large states, and the other ten as small ones; repeating the calculations of Mr. Brearly, as to the disparity of votes which would take place, and affirming that the small states would never agree to it. . . . It has been said that, if a national government is to be formed so as to operate on the people, and not on the states, the representatives ought to be drawn from the people. But why so? May not a legislature, filled by the state legislatures, operate on the people who choose the state legislatures? Or may not a practicable coercion be found? He admitted that there was none such in the existing system. He was attached strongly to the plan of the existing Confederacy, in which the people choose their legislative representatives, and the legislatures their federal representatives. No other amendments were wanting than to mark the orbits of the states with due precision, and provide for the use of coercion, which was the great point. He alluded to the hint, thrown out by Mr. Wilson, of the necessity to which the large states might be reduced, of confederating among themselves, by a refusal of the others to concur. Let them unite if they please, but let them remember that they have no authority to compel the others to unite. New Jersey will never confederate on the plan before the committee. She would be swallowed up. He had rather submit to a monarch, to a despot, than to such a fate. He would not only oppose the plan here, but, on his return home, do every thing in his power to defeat it there.

Mr. WILSON hoped, if the Confederacy should be dissolved, that a *majority*,—nay, a *minority* of the states would unite for their safety. He entered elaborately into the defence of a proportional representation, stating, for his first position, that, as all authority was derived from the people, equal numbers of people ought to have an equal number of representatives, and different numbers of people, different numbers of representatives. This principle had been improperly violated in the Confederation,

owing to the urgent circumstances of the time. . . . Mr. Patterson admitted persons, not property, to be the measure of suffrage. Are not the citizens of Pennsylvania equal to those of New Jersey? Does it require one hundred and fifty of the former to balance fifty of the latter? Representatives of different districts ought clearly to hold the same proportion to each other, as their respective constituents hold to each other. If the small states will not confederate on this plan, Pennsylvania, and he presumed some other states, would not confederate on any other. We have been told that, each state being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men are therefore naturally equal. Can he retain this equality when he becomes a member of civil government? He cannot. As little can a sovereign state, when it becomes a member of a federal government. If New Jersey will not part with her sovereignty, it is vain to talk of government. A new partition of the states is desirable, but evidently and totally impracticable. . . .

[June 19] Mr. MARTIN said, he considered that the separation from Great Britain placed the thirteen states in a state of nature towards each other; that they would have remained in that state till this time, but for the Confederation; that they entered into the Confederation on the footing of equality; that they met now to amend it, on the same footing; and that he could never accede to a plan that would introduce an inequality, and lay ten states at the mercy of Virginia, Massachusetts, and Pennsylvania.

Mr. WILSON could not admit the doctrine that, when the colonies became independent of Great Britain, they became independent also of each other. He read the Declaration of Independence, observing thereon, that the *United Colonies* were declared to be free and independent states, and inferring, that they were independent, not *individually* but *unitedly*, and that they were confederated, as they were independent states.

Col. HAMILTON assented to the doctrine of Mr. Wilson. He denied the doctrine that the states were thrown into a state of nature. He was not yet prepared to admit the doctrine that the Confederacy could be dissolved by partial infractions of it. He admitted that the states met now on an equal footing, but could see no inference from that against concerting a change of the system in this particular. . . .

[June 27] Mr. L. MARTIN contended, at great length, and with great eagerness, that the general government was meant merely to preserve the state governments, not to govern individuals: that its powers ought to be kept within narrow limits: that if too little power was given to it, more might be added; but that if too much, it could never be resumed: that individuals, as such, have little to do but with their own states: that the general government has no more to apprehend from the states composing the Union, while it pursues proper measures, than a government over individuals has to apprehend from its subjects: that to resort to the citizens at large, for their sanction to a new government, will be throwing them back into a state of nature: that the dissolution of the state governments is involved in the nature of the process: that the people have no right to do this, without the consent of those to whom they have delegated their power for state purposes: through their tongues only they can speak, through their ears only they can hear: that the states have shown a good disposition to comply with the acts of Congress, weak, contemptibly weak, as that body has been; and have failed through inability alone to comply: that the heaviness of the private debts, and the waste of property during the war, were the chief causes of this inability: that he did not conceive the instances mentioned, by Mr. Madison, of compacts between Virginia and Maryland, between Pennsylvania and New Jersey, or of troops raised by Massachusetts for defence against the rebels, to be violations of the Articles of Confederation: that an equal vote in each state was essential to the federal idea, and was founded in justice and freedom, not merely in policy: that though the states may give up this right of sovereignty, yet they had not, and ought not: that the states, like individuals, were, in a state of nature, equally sovereign and free. In order to prove that individuals in a state of nature are equally free and independent, he read passages from Locke, Vattel, Lord Somers, Priestly. To prove that the case is the same with states, till they surrender their equal sovereignty, he read other passages in Locke, and Vattel, and also Rutherford: that the states, being equal, cannot treat or confederate so as to give up an equality of votes, without giving up their liberty: that the propositions on the table were a system of slavery for ten states: that as Virginia, Massachusetts, and Pennsylvania, have forty two ninetieths of the votes, they can do as they please,

without a miraculous union of the other ten: that they will have nothing to do but to gain over one of the ten, to make them complete masters of the rest: that they can then appoint an executive, and judiciary, and legislature for them, as they please: that there was, and would continue, a natural predilection and partiality in men for their own states: that the states, particularly the smaller, would never allow a negative to be exercised over their laws: that no state, in ratifying the Confederation, had objected to the equality of votes: that the complaints at present ran not against this equality, but the want of power: that sixteen members from Virginia would be more likely to act in concert than a like number formed of members from different states: that, instead of a junction of the small states as a remedy, he thought a division of the large states would be more eligible. This was the substance of a speech which was continued more than three hours. He was too much exhausted, he said, to finish his remarks, and reminded the House that he should to-morrow resume them.

[June 28] Mr. MADISON said, he was much disposed to concur in any expedient, not inconsistent with fundamental principles, that could remove the difficulty concerning the rule of representation. But he could neither be convinced that the rule contended for was just, nor that it was necessary for the safety of the small states against the large states. That it was not just, had been conceded by Mr. Brearley and Mr. Patterson themselves. The expedient proposed by them was a new partition of the territory of the United States. The fallacy of the reasoning drawn from the equality of sovereign states, in the formation of compacts, lay in confounding mere treaties, in which were specified certain duties to which the parties were to be bound, and certain rules by which their subjects were to be reciprocally governed in their intercourse, with a compact by which an authority was created paramount to the parties, and making laws for the government of them. If France, England, and Spain, were to enter into a treaty for the regulation of commerce, &c., with the Prince of Monacho, and four or five other of the smallest sovereigns of Europe, they would not hesitate to treat as equals, and to make the regulations perfectly reciprocal. Would the case be the same, if a council were to be formed of deputies from each, with authority and discretion to raise money, levy troops, determine the value of coin, &c.? Would thirty or forty millions of people submit

their fortunes into the hands of a few thousands? If they did, it would only prove that they expected more from the terror of their superior force, than they feared from the selfishness of their feeble associates. Why are countries of the same states represented in proportion to their numbers? Is it because the representatives are chosen by the people themselves? So will be the representatives in the national legislature. Is it because the larger have more at stake than the smaller? The case will be the same with the larger and smaller states. Is it because the laws are to operate immediately on their persons and properties? The same is the case, in some degree, as the Articles of Confederation stand; the same will be the case, in a far greater degree, under the plan proposed to be substituted. In the cases of captures, of piracies, and of offences in a federal army, the property and persons of individuals depend on the laws of Congress. By the plan proposed, a complete power of taxation—the highest prerogative of supremacy—is proposed to be vested in the national government. Many other powers are added, which assimilate it to the government of individual states. The negative proposed on the state laws will make it an essential branch of the state legislatures, and of course will require that it should be exercised by a body established on like principles with the branches of those legislatures. That it is not necessary to secure the small states against the large ones, he conceived to be equally obvious. Was a combination of the large ones dreaded? This must arise either from some interest common to Virginia, Massachusetts, and Pennsylvania, and distinguishing them from the other states; or from the mere circumstance of similarity of size. Did any such common interest exist? In point of situation, they could not have been more effectually separated from each other by the most jealous citizens of the most jealous states. In point of manners, religion, and the other circumstances which sometimes beget affection between different communities, they were not more assimilated than the other states. In point of the staple productions, they were as dissimilar as any three other states in the Union. The staple of Massachusetts was *fish*, of Pennsylvania *flour*, of Virginia *tobacco*. Was a combination to be apprehended from the mere circumstance of equality of size? Experience suggested no such danger. The Journals of Congress did not present any peculiar association of these states in the votes recorded. It had never been seen that different counties in the

same state, conformable in extent, but disagreeing in other circumstances, betrayed a propensity to such combinations. Experience rather taught a contrary lesson. Among individuals of superior eminence and weight in society, rivalships were much more frequent than coalitions. Among independent nations, preeminent over their neighbors, the same remark was verified. Carthage and Rome tore one another to pieces, instead of uniting their forces to devour the weaker nations of the earth. The house of Austria and France were hostile as long as they remained the greatest powers of Europe. England and France have succeeded to the preëminence and to the enmity. To this principle we owe perhaps our liberty. A coalition between those powers would have been fatal to us. Among the principal members of ancient and modern confederacies, we find the same effect from the same cause. The contentions, not the coalitions, of Sparta, Athens, and Thebes, proved fatal to the smaller members of the Amphictyonic confederacy. The contentions, not the combinations, of Russia and Austria, have distracted and oppressed the German empire. Were the large states formidable, *singly*, to their smaller neighbors? On this supposition, the latter ought to wish for such a general government as will operate with equal energy on the former as on themselves. The more lax the band, the more liberty the larger will have to avail themselves of their superior force. Here, again, experience was an instructive monitor. What is the situation of the weak, compared with the strong, in those stages of civilization in which the violence of individuals is least controlled by an efficient government? The heroic period of ancient Greece, the feudal licentiousness of the middle ages of Europe, the existing condition of the American savages, answer this question. What is the situation of the minor sovereigns in the great society of independent nations, in which the more powerful are under no control but the nominal authority of the law of nations? Is not the danger to the former exactly in proportion to their weakness? But there are cases still more in point. What was the condition of the weaker members of the Amphictyonic confederacy? Plutarch (see Life of Themistocles) will inform us, that it happened but too often, that the strongest cities corrupted and awed the weaker, and that judgment went in favor of the more powerful party. What is the condition of the lesser states in the German confederacy? We all know that they are exceedingly trampled

upon, and that they owe their safety, as far as they enjoy it, partly to their enlisting themselves under the rival banners of the pre-eminent members, partly to alliances with neighboring princes, which the constitution of the empire does not prohibit. What is the state of things in the lax system of the Dutch confederacy? Holland contains about half the people, supplies about half the money, and by her influence silently and indirectly governs the whole republic. In a word, the two extremes before us are, a perfect separation, and a perfect incorporation of the thirteen states. In the first case, they would be independent nations, subject to no law but the law of nations. In the last, they would be mere counties of one entire republic, subject to one common law. In the first case, the smaller states would have every thing to fear from the larger. In the last, they would have nothing to fear. The true policy of the small states, therefore, lies in promoting those principles, and that form of government, which will most approximate the states to the condition of counties. Another consideration may be added. If the general government be feeble, the larger states, distrusting its continuance, and foreseeing that their importance and security may depend on their own size and strength, will never submit to a partition. Give to the general government sufficient energy and permanency, and you remove the objection. Gradual partitions of the large, and junctions of the small states, will be facilitated, and time may effect that equalization which is wished for by the small states now, but can never be accomplished at once.

Mr. WILSON. The leading argument of those who contend for equality of votes among the states, is, that the states as such, being equal, and being represented, not as districts of individuals, but in their political and corporate capacities, are entitled to an equality of suffrage. According to this mode of reasoning, the representation of the boroughs in England, which has been allowed on all hands to be the rotten part of the constitution, is perfectly right and proper. They are, like the states, represented in their corporate capacity; like the states, therefore, they are entitled to equal voices—Old Sarum to as many as London. And instead of the injury supposed hitherto to be done to London, the true ground of complaint lies with Old Sarum: for London, instead of two, which is her proper share, sends four representatives to Parliament.

Mr. SHERMAN. The question is, not what rights naturally belong to man, but how they may be most equally and effectually guarded in society. And if some give up more than others, in order to obtain this end, there can be no room for complaint. To do otherwise, to require an equal concession from all, if it would create danger to the rights of some, would be sacrificing the end to the means. The rich man who enters into society along with the poor man gives up more than the poor man, yet, with an equal vote, he is equally safe. Were he to have more votes than the poor man, in proportion to his superior stake, the rights of the poor man would immediately cease to be secure. This consideration prevailed when the Articles of Confederation were formed. . . .

[June 29] Mr. GERRY urged, that we never were independent states, were not such now, and never could be, even on the principles of the Confederation. The states, and the advocates for them, were intoxicated with the idea of their *sovereignty*. He was a member of Congress at the time the Federal Articles were formed. The injustice of allowing each state an equal vote was long insisted on. He voted for it, but it was against his judgment, and under the pressure of public danger, and the obstinacy of the lesser states. The present Confederation he considered as dissolving. The fate of the Union will be decided by the Convention. If they do not agree on something, few delegates will probably be appointed to Congress. If they do, Congress will probably be kept up till the new system should be adopted. He lamented that, instead of coming here like a band of brothers, belonging to the same family, we seemed to have brought with us the spirit of political negotiators. . . .

SECTIONALISM

[July 11] . . . Mr. Randolph's motion, requiring the legislature to take a periodical cencus, for the purpose of redressing inequalities in the representation, was resumed.

Mr. SHERMAN was against shackling the legislature too much. We ought to choose wise and good men, and then confide in them.

Mr. MASON. The greater the difficulty we find in fixing a proper rule of representation, the more unwilling ought we to be to throw the task from ourselves on the general legislature. He

did not object to the conjectural ratio which was to prevail in the outset; but considered a revision from time to time, according to some permanent and precise standard, as essential to the fair representation required in the first branch. According to the present population of America, the northern part of it had a right to preponderate, and he could not deny it. But he wished it not to preponderate hereafter, when the reason no longer continued. From the nature of man, we may be sure that those who have power in their hands will not give it up, while they can retain it. On the contrary, we know that they will always, when they can, rather increase it. If the Southern States, therefore, should have three fourths of the people of America within their limits, the Northern will hold fast the majority of representatives. One fourth will govern the three fourths. The Southern States will complain; but they may complain from generation to generation without redress. Unless some principle, therefore, which will do justice to them hereafter, shall be inserted in the Constitution, disagreeable as the declaration was to him, he must declare he could neither vote for the system here, nor support it in his state. Strong objections had been drawn from the danger to the Atlantic interests from new Western States. Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to states which are not yet in existence? If the Western States are to be admitted into the Union, as they arise, they must, he would repeat, be treated as equals, and subjected to no degrading discriminations. They will have the same pride, and other passions, which we have; and will either not unite with, or will speedily revolt from, the Union, if they are not in all respects placed on an equal footing with their brethren. It has been said, they will be poor, and unable to make equal contributions to the general treasury. He did not know but that, in time, they would be both more numerous and more wealthy than their Atlantic brethren. The extent and fertility of their soil made this probable; and though Spain might for a time deprive them of the natural outlet for their productions, yet she will, because she must, finally yield to their demands. He urged that numbers of inhabitants, though not always a precise standard of wealth, was sufficiently so for every substantial purpose. . . .

Mr. GOUVERNEUR MORRIS. The arguments of others, and his own reflections, had led him to a very different conclusion. If

we cannot agree on a rule that will be just at this time, how can we expect to find one that will be just in all times to come? Surely, those who come after us will judge better of things present than we can of things future. He could not persuade himself that numbers would be a just rule at any time. The remarks of (Mr. Mason) relative to the western country had not changed his opinion on that head. Among other objections, it must be apparent, they would not be able to furnish men equally enlightened, to share in the administration of our common interests. The busy haunts of men, not the remote wilderness, was the proper school of political talents. If the western people get the power into their hands, they will ruin the Atlantic interests. The back members are always most adverse to the best measures. He mentioned the case of Pennsylvania formerly. The lower part of the state had the power in the first instance. They kept it in their own hands, and the country was the better for it. Another objection with him, against admitting the blacks into the census, was, that the people of Pennsylvania would revolt at the idea of being put on a footing with slaves. They would reject any plan that was to have such an effect. Two objections had been raised against leaving the adjustment of the representation, from time to time, to the discretion of the legislature. The first was, they would be unwilling to revise it at all. The second, that, by referring to *wealth*, they would be bound by a rule which, if willing, they would be unable to execute. The first objection distrusts their fidelity. But if their duty, their honor, and their oaths, will not bind them, let us not put into their hands our liberty, and all our other great interests; let us have no government at all. In the second place, if these ties will bind them, we need not distrust the practicability of the rule. It was followed in part by the committee in the apportionment of representatives yesterday reported to the House. The best course that could be taken would be to leave the interests of the people to the representatives of the people.

Mr. MADISON was not a little surprised to hear this implicit confidence urged by a member who, on all occasions, had inculcated so strongly the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice and interest. If the representatives of the people would be bound by the ties he had mentioned, what need was there of a Senate? What of a revisionary power? But his reasoning was not only in-

consistent with his former reasoning, but with itself. At the same time that he recommended this implicit confidence to the Southern States in the northern majority, he was still more zealous in exhorting all to a jealousy of a western majority. To reconcile the gentleman with himself, it must be imagined that he determined the human character by the points of the compass. The truth was, that all men having power ought to be distrusted to a certain degree. The case of Pennsylvania had been mentioned, where it was admitted that those who were possessed of the power in the original settlement never admitted the new settlements to a due share of it. England was a still more striking example. The power there had long been in the hands of the boroughs—of the minority—who had opposed and defeated every reform which had been attempted. Virginia was, in a less degree, another example. With regard to the Western States, he was clear and firm in opinion that no unfavorable distinctions were admissible, either in point of justice or policy. He thought, also, that the hope of contributions to the treasury from them had been much underrated. Future contributions, it seemed to be understood on all hands, would be principally levied on imports and exports. The extent and fertility of the western soil would, for a long time, give to agriculture a preference over manufactures. Trials would be repeated till some articles could be raised from it that would bear a transportation to places where they could be exchanged for imported manufactures. Whenever the Mississippi should be opened to them, (which would, of necessity, be the case as soon as their population would subject them to any considerable share of the public burden,) imposts on their trade could be collected with less expense and greater certainty than on that of the Atlantic States. . . .

[July 14] Mr. GERRY wished, before the question should be put, that the attention of the House might be turned to the dangers apprehended from western states. He was for admitting them on liberal terms, but not for putting ourselves into their hands. They will, if they acquire power, like all men, abuse it. They will oppress commerce, and drain our wealth into the western country. To guard against these consequences, he thought it necessary to limit the number of new states to be admitted into the Union, in such a manner that they should never be able to outnumber the Atlantic states. He accordingly moved, "that, in order to secure the liberties of the states already confederated, the

number of representatives in the first branch, of the states which shall hereafter be established, shall never exceed in number the representatives from such of the states as shall accede to this Confederation."

Mr. KING seconded the motion.

Mr. SHERMAN thought there was no probability that the number of future states would exceed that of the existing states. If the event should ever happen, it was too remote to be taken into consideration at this time. Besides, we are providing for our posterity, for our children and our grandchildren, who would be as likely to be citizens of new western states as of the old states. On this consideration alone, we ought to make no such discrimination as was proposed by the motion.

Mr. GERRY. If some of our children should remove, others will stay behind; and he thought incumbent on us to provide for their interests. There was a rage for emigration from the Eastern States to the western country, and he did not wish those remaining behind to be at the mercy of the emigrants. Besides, foreigners are resorting to that country, and it is uncertain what turn things may take there. . . .

[August 29] Mr. PINCKNEY moved to postpone the report, in favor of the following proposition:—

"That no act of the legislature for the purpose of regulating the commerce of the United States with foreign powers, among the several states, shall be passed without the assent of two thirds of the members of each House."

He remarked, that there were five distinct commercial interests: 1. The fisheries and West India trade, which belonged to the New England States. 2. The interest of New York lay in a free trade. 3. Wheat and flour, the staples of the two Middle States, (New Jersey and Pennsylvania.) 4. Tobacco, the staple of Maryland and Virginia, and partly of North Carolina. 5. Rice and indigo, the staples of South Carolina and Georgia. These different interests would be a source of oppressive regulations, if no check to a bare majority should be provided. States pursue their interests with less scruple than individuals. The power of regulating commerce was a pure concession on the part of the Southern States. They did not need the protection of the Northern States at present.

Mr. MARTIN seconded the motion.

Gen. PINCKNEY said, it was the true interest of the Southern States to have no regulation of commerce; but, considering the loss brought on the commerce of the Eastern States by the revolution, their liberal conduct towards the views of South Carolina, and the interest the weak Southern States had in being united with the strong Eastern States, he thought it proper that no fetters should be imposed on the power of making commercial regulations, and that his constituents, though prejudiced against the Eastern States, would be reconciled to this liberality. He had himself, he said, prejudices against the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.

Mr. CLYMER. The diversity of commercial interest of necessity creates difficulties which ought not to be increased by unnecessary restrictions. The Northern and Middle States will be ruined, if not enabled to defend themselves against foreign regulations.

Mr. SHERMAN, alluding to Mr. Pinckney's enumeration of particular interests, as requiring a security against abuse of the power, observed, that the diversity was of itself a security; adding, that to require more than a majority to decide a question was always embarrassing, as had been experienced in cases requiring the votes of nine states in Congress.

Mr. PINCKNEY replied, that his enumeration meant the five minute interests. It still left the two great divisions, of northern and southern interests.

Mr. GOUVERNEUR MORRIS opposed the object of the motion, as highly injurious. Preferences to American ships will multiply them, till they can carry the southern produce cheaper than it is now carried. A navy was essential to security, particularly of the Southern States; and can only be had by a navigation act encouraging American bottoms and seamen. In those points of view, then, alone, it is the interest of the Southern States that navigation acts should be facilitated. Shipping, he said, was the worst and most precarious kind of property, and stood in need of public patronage.

Mr. WILLIAMSON was in favor of making two thirds, instead of a majority, requisite, as more satisfactory to the southern people. No useful measure, he believed, had been lost in Congress for want of nine votes. As to the weakness of the Southern

States, he was not alarmed on that account. The sickliness of their climate for invaders would prevent their being made an object. He acknowledged that he did not think the motion requiring two thirds necessary in itself; because, if a majority of the Northern States should push their regulations too far, the Southern States would build ships for themselves; but he knew the southern people were apprehensive on this subject, and would be pleased with the precaution.

Mr. SPAIGHT was against the motion. The Southern States could at any time save themselves from oppression, by building ships for their own use.

Mr. BUTLER differed from those who considered the rejection of the motion as no concession on the part of the Southern States. He considered the interest of these and of the Eastern States to be as different as the interests of Russia and Turkey. Being, notwithstanding desirous of conciliating the affections of the Eastern States, he should vote against requiring two thirds instead of a majority.

Col. MASON. If the government is to be lasting, it must be founded in the confidence and affections of the people; and must be so constructed as to obtain these. The *majority* will be governed by their interests. The Southern States are the *minority* in both Houses. It is to be expected that they will deliver themselves, bound hand and foot, to the Eastern States, and enable them to exclaim, in the words of Cromwell, on a certain occasion—"the Lord hath delivered them into our hands"?

Mr. WILSON took notice of the several objections, and remarked, that if every peculiar interest was to be secured, *unanimity* ought to be required. The majority, he said, would be no more governed by interest than the minority. It was surely better to let the latter be bound hand and foot, than the former. Great inconveniences had, he contended, been experienced in Congress from the Article of Confederation requiring nine votes in certain cases.

Mr. MADISON went into a pretty full view of the subject. He observed that the disadvantage to the Southern States from a navigation act lay chiefly in a temporary rise of freight, attended, however, with an increase of southern as well as northern shipping—with the emigration of northern seamen and merchants to the Southern States—and with a removal of the existing and in-

jurious retaliations among the states on each other. The power of foreign nations to obstruct our retaliating measures on them, by a corrupt influence, would also be less, if a majority should be made competent, than if two thirds of each House should be required to legislate acts in this case. An abuse of the power would be qualified with all these good effects. But he thought an abuse was rendered improbable by the provision of two branches—by the independence of the Senate—by the negative of the executive —by the interest of Connecticut and New Jersey, which were agricultural, not commercial states—by the interior interest, which was also agricultural in the most commercial states—and by the accession of Western States, which would be altogether agricultural. He added, that the Southern States would derive an essential advantage in the general security afforded by the increase of our maritime strength. He stated the vulnerable situation of them all, and of Virginia in particular. The increase of the coasting trade, and of seamen, would also be favorable to the Southern States, by increasing the consumption of their produce. If the wealth of the eastern should in a still greater proportion be augmented, that wealth would contribute the more to the public wants, and be otherwise a national benefit.

Mr. RUTLEDGE was against the motion of his colleague. It did not follow, from a grant of the power to regulate trade, that it would be abused. At the worst, a navigation act could bear hard a little while only on the Southern States. As we are laying the foundation for a great empire, we ought to take a permanent view of the subject, and not look at the present moment only. He reminded the House of the necessity of securing the West India trade to this country. That was the great object, and a navigation act was necessary for obtaining it.

Mr. RANDOLPH said that there were features so odious in the Constitution, as it now stands, that he doubted whether he should be able to agree to it. A rejection of the motion would complete the deformity of the system. He took notice of the argument in favor of giving the power over trade to a majority, drawn from the opportunity foreign powers would have of obstructing retaliatory measures, if two thirds were made requisite. He did not think there was weight in that consideration. The difference between a majority and two thirds did not afford room for such an opportunity. Foreign influence would also be more likely to be exerted

on the President, who could require three fourths by his negative. He did not mean, however, to enter into the merits. What he had in view was merely to pave the way for a declaration—which he might be hereafter obliged to make, if an accumulation of obnoxious ingredients should take place—that he could not give his assent to the plan.

Mr. GORHAM. If the government is to be so fettered as to be unable to relieve the Eastern States, what motive can they have to join in it, and thereby tie their own hands from measures which they could otherwise take for themselves? The Eastern States were not led to strengthen the Union by fear for their own safety. He deprecated the consequences of disunion; but if it should take place, it was the southern part of the continent that had most reason to dread them. He urged the improbability of a combination against the interest of the Southern States, the different situations of the Northern and Middle States being a security against it. It was, moreover, certain, that foreign ships would never be altogether excluded, especially those of nations in treaty with us.

On the question to postpone, in order to take up Mr. Pinckney's motion,—

Maryland, Virginia, North Carolina, Georgia, ay, 4; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina, no, 7. . . .

THE SUFFRAGE

[August 7] Mr. GOUVERNEUR MORRIS moved to strike out the last member of the section, beginning with the words, "qualifications of electors," in order that some other provision might be substituted which would restrain the right of suffrage to freeholders. . . .

. . . Such a hardship would be neither great nor novel. The people are accustomed to it, and not dissatisfied with it, in several of the states. In some, the qualifications are different for the choice of the governor and of the representatives; in others, for different houses of the legislature. Another objection against the clause, as it stands, is, that it makes the qualifications of the national legislature depend on the will of the states, which he thought not proper.

Mr. ELLSWORTH thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the state constitutions. The people will not readily subscribe to the national Constitution, if it should subject them to be disfranchised. The states are the best judges of the circumstances and temper of their own people.

Col. MASON. The force of habit is certainly not attended to by those gentlemen who wish for innovations on this point. Eight or nine states have extended the right of suffrage beyond the freeholders. What will the people there say, if they should be disfranchised? A power to alter the qualifications would be a dangerous power in the hands of the legislature.

Mr. BUTLER. There is no right of which the people are more jealous than that of suffrage. Abridgements of it tend to the same revolution as in Holland, where they have at length thrown all power into the hands of the senates, who fill up vacancies themselves, and form a rank aristocracy.

Mr. DICKINSON had a very different idea of the tendency of vesting the right of suffrage in the freeholders of the country. He considered them as the best guardians of liberty; and the restriction of the right to them as a necessary defence against the dangerous influence of those multitudes, without property and without principle, with which our country, like all others, will in time abound. As to the unpopularity of the innovation, it was, in his opinion, chimerical. The great mass of our citizens is composed at this time of freeholders, and will be pleased with it.

Mr. ELLSWORTH. How shall the freehold be defined? Ought not every man, who pays a tax, to vote for the representative who is to levy and dispose of his money? Shall the wealthy merchants and manufacturers, who will bear a full share of the public burdens, be not allowed a voice in the imposition of them? Taxation and representation ought to go together.

Mr. GOUVERNEUR MORRIS. He had long learned not to be the dupe of words. The sound of aristocracy, therefore, had no effect upon him. It was the thing, not the name, to which he was opposed; and one of his principal objections to the Constitution, as it is now before us, is, that it threatens the country with an aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property, and

they will sell them to the rich, who will be able to buy them. We should not confine our attention to the present moment. The time is not distant when this country will abound with mechanics and manufacturers, who will receive their bread from their employers. Will such men be the secure and faithful guardians of liberty? Will they be the impregnable barrier against aristocracy? He was as little duped by the association of the words "taxation and representation." The man who does not give his vote freely, is not represented. It is the man who dictates the vote. Children do not vote. Why? Because they want prudence; because they have no will of their own. The ignorant and the dependent can be as little trusted with the public interest. He did not conceive the difficulty of defining "freeholders" to be insuperable; still less that the restriction could be unpopular. Nine tenths of the people are at present freeholders, and these will certainly be pleased with it. As to merchants, &c., if they have wealth, and value the right, they can acquire it. If not, they don't deserve it.

Col. MASON. We all feel too strongly the remains of ancient prejudices, and view things too much through a British medium. A freehold is the qualification in England, and hence it is imagined to be the only proper one. The true idea, in his opinion, was, that every man having evidence of attachment to, and permanent common interest with, the society, ought to share in all its rights and privileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in the proprietor? Does nothing besides property mark a permanent attachment? Ought the merchant, the moneyed man, the parent of a number of children whose fortunes are to be pursued in his own country, to be viewed as suspicious characters, and unworthy to be trusted with the common rights of their fellow-citizens?

Mr. MADISON. The right of suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the legislature. A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms. Whether the constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in the states where the right was now exercised by every description of people. In several of the states, a freehold was now the qualifica-

tion. Viewing the subject in its merits alone, the freeholders of the country would be the safest depositories of republican liberty. In future times, a great majority of the people will not only be without landed, but any other sort of property. These will either combine, under the influence of their common situation,—in which case the rights of property and the public liberty will not be secure in their hands,—or, what is more probable, they will become the tools of opulence and ambition; in which case, there will be equal danger on another side. The example of England has been misconceived (by Col. Mason). A very small proportion of the representatives are there chosen by freeholders. The greatest part are chosen by the cities and boroughs, in many of which the qualification of suffrage is as low as it is in any one of the United States; and it was in the boroughs and cities, rather than the counties, that bribery most prevailed and the influence of the crown on elections was most dangerously exerted.

Dr. FRANKLIN. It is of great consequence that we should not depress the virtue and public spirit of our common people; of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it. He related the honorable refusal of the American seamen, who were carried in great numbers into the British prisons during the war, to redeem themselves from misery, or to seek their fortunes, by entering on board the ships of the enemies to their country; contrasting their patriotism with a contemporary instance, in which the British seamen, made prisoners by the Americans, readily entered on the ships of the latter, on being promised a share of the prizes that might be made out of their own country. This proceeded, he said, from the different manner in which the common people were treated in America and Great Britain. He did not think that the elected had any right, in any case, to narrow the privileges of the electors. He quoted, as arbitrary, the British statute setting forth the danger of tumultuous meetings, and, under that pretext, narrowing the right of suffrage to persons having freeholds of a certain value; observing, that this statute was soon followed by another, under the succeeding parliament, subjecting the people who had no votes to peculiar labors and hardships. He was persuaded, also, that such a restriction as was proposed would give great uneasiness in the populous states. The sons of a substantial farmer, not being themselves freeholders,

would not be pleased at being disfranchised, and there are a great many persons of that description.

Mr. MERCER. The Constitution is objectionable in many points, but in none more than the present. He objected to the footing on which the qualification was put, but particularly to the *mode of election* by the people. The people cannot know and judge of the characters of candidates. The worst possible choice will be made. He quoted the case of the senate in Virginia, as an example in point. The people in towns can unite their votes in favor of one favorite, and by that means always prevail over the people of the country, who, being dispersed, will scatter their votes among a variety of candidates.

Mr. RUTLEDGE thought the idea of restraining the right of suffrage to the freeholders a very unadvised one. It would create division among the people; and make enemies of all those who should be excluded. . . .

SLAVERY

[August 8] Mr. KING wished to know what influence the vote just passed was meant to have on the succeeding part of the report, concerning the admission of slaves into the rule of representation. He could not reconcile his mind to the articles, if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, and he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore, because he had hoped that this concession would have produced a readiness, which had not been manifested, to strengthen the general government, and to mark a full confidence in it. The report under consideration had, by the tenor of it, put an end to all those hopes. In two great points, the hands of the legislature were absolutely tied. The importation of slaves could not be prohibited. Exports could not be taxed. Is this reasonable? What are the great objects of the general system? First, defence against foreign invasion; secondly, against internal sedition. Shall all the states, then, be bound to defend each, and shall each be at liberty to introduce a weakness which will render defence more difficult? Shall one part of the United States be bound to defend another part, and that other part be at liberty, not only to increase its own

danger, but to with-hold the compensation for the burden? If slaves are to be imported, shall not the exports produced by their labor supply a revenue the better to enable the general government to defend their masters? There was so much inequality and unreasonableness in all this, that the people of the Northern States could never be reconciled to it. No candid man could undertake to justify it to them. He had hoped that some accommodation would have taken place on this subject; that, at least, a time would have been limited for the importation of slaves. He never could agree to let them be imported without limitation, and then be represented in the national legislature. Indeed, he could so little persuade himself of the rectitude of such a practice, that he was not sure he could assent to it under any circumstances. At all events, either slaves should not be represented, or exports should be taxable. . . .

Mr. GOUVERNEUR MORRIS moved to insert "free" before the word "inhabitants." Much, he said, would depend on this point. He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the states where it prevailed. Compare the free regions of the Middle States, where a rich and noble cultivation marks the prosperity and happiness of the people, with the misery and poverty which overspread the barren wastes of Virginia, Maryland, and the other states having slaves. Travel through the whole continent, and you behold the prospect continually varying with the appearance and disappearance of slavery. The moment you leave the Eastern States, and enter New York, the effect of the institution becomes visible. Passing through the Jerseys, and entering Pennsylvania, every criterion of superior improvement witnesses the change. Proceed southwardly, and every step you take, through the great regions of slaves, presents a desert increasing with the increasing proportion of these wretched beings. Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens, and let them vote. Are they property? Why, then, is no other property included? The houses in this city (Philadelphia) are worth more than all the wretched slaves who cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this,—that the inhabitant of Georgia and South Carolina, who goes to the coast of Africa, and, in defiance of the most sacred

laws of humanity, tears away his fellow-creatures from their dearest connections, and damns them to the most cruel bondage, shall have more votes, in a government instituted for the protection of the rights of mankind, than the citizen of Pennsylvania or New Jersey, who views, with a laudable horror, so nefarious a practice. He would add, that domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution. The vassalage of the poor has ever been the favorite offspring of aristocracy. And what is the proposed compensation to the Northern States, for a sacrifice of every principle of right, of every impulse of humanity? They are to bind themselves to march their militia for the defence of the Southern States, for their defence against those very slaves of whom they complain. They must supply vessels and seamen, in case of foreign attack. The legislature will have indefinite power to tax them by excises, and duties on imports, both of which will fall heavier on them than on the southern inhabitants; for the bohea tea used by a northern freeman will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side, the Southern States are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack and the difficulty of defence; nay, they are to be encouraged to it, by an assurance of having their votes in the national government increased in proportion; and are, at the same time, to have their exports and their slaves exempt from all contributions for the public service. Let it not be said that direct taxation is to be proportioned to representation. It is idle to suppose that the general government can stretch its hand directly into the pockets of the people, scattered over so vast a country. They can only do it through the medium of exports, imports, and excises. For what, then, are all the sacrifices to be made? He would sooner submit himself to a tax for paying for all the negroes in the United States, than saddle posterity with such a Constitution. . . .

[August 22] Mr. SHERMAN was for leaving the clause as it stands. He disapproved of the slave trade; yet, as the states were now possessed of the right to import slaves, as the public good did not require it to be taken from them, and as it was expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the matter as we find it.

He observed, that the abolition of slavery seemed to be going on in the United States, and that the good sense of the several states would probably by degrees complete it. He urged on the Convention the necessity of despatching its business.

Col. MASON. This infernal traffic originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing states alone, but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves as it did by the tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell, to the commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail. Maryland and Virginia, he said, had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All this would be in vain, if South Carolina and Georgia be at liberty to import. The western people are already calling out for slaves for their new lands, and will fill that country with slaves, if they can be got through South Carolina and Georgia. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. He lamented that some of our eastern brethren had, from a lust of gain, embarked in this nefarious traffic. As to the states being in possession of the right to import, this was the case with many other rights, now to be properly given up. He held it essential, in every point of view, that the general government should have power to prevent the increase of slavery.

Mr. ELLSWORTH, as he had never owned a slave, could not judge of the effects of slavery on character. He said, however, that if it was to be considered in a moral light, we ought to go further, and free those already in the country. As slaves also

multiply so fast in Virginia and Maryland, that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no further than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery, in time, will not be a speck in our country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the salves.

Mr. PINCKNEY. If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece, Rome, and other ancient states; the sanction given by France, England, Holland, and other modern states. In all ages, one half of mankind have been slaves. If the Southern States were let alone, they will probably of themselves stop importations. He would himself, as a citizen of South Carolina, vote for it. An attempt to take away the right, as proposed, will produce serious objections to the Constitution, which he wished to see adopted.

Gen. PINCKNEY declared it to be his firm opinion that if himself and all his colleagues were to sign the Constitution, and use their personal influence, it would be of no avail towards obtaining the assent of their constituents. South Carolina and Georgia cannot do without slaves. As to Virginia, she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unequal to require South Carolina and Georgia to confederate on such unequal terms. He said, the royal assent, before the revolution, had never been refused to South Carolina, as to Virginia. He contended, that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; the more consumption also; and the more of this, the more revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports; but should consider a rejection of the clause as an exclusion of South Carolina from the Union.

Mr. BALDWIN had conceived national objects alone to be before the Convention; not such as, like the present, were of a local nature. Georgia was decided on this point. That state has always hitherto supposed a general government to be the pursuit

of the central states, who wished to have a vortex for every thing; that her distance would preclude her from equal advantage; and that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. . . .

Mr. WILSON observed that, if South Carolina and Georgia were themselves disposed to get rid of the importation of slaves in a short time, as had been suggested, they would never refuse to unite because the importation might be prohibited. As the section now stands, all articles imported are to be taxed. Slaves alone are exempt. This is, in fact, a bounty on that article.

Mr. GERRY thought we had nothing to do with the conduct of the states as to slaves, but ought to be careful not to give any sanction to it.

Mr. DICKINSON considered it as inadmissible, on every principle of honor and safety, that the importation of slaves should be authorized to the states by the Constitution. The true question was, whether the national happiness would be promoted or impeded by the importation; and this question ought to be left to the national government, not to the states particularly interested. If England and France permit slavery, slaves are, at the same time, excluded from both those kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the Southern States would refuse to confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the general government. . . .

Gen. PINCKNEY thought himself bound to declare candidly, that he did not think South Carolina would stop her importations of slaves in any short time; but only stop them occasionally, as she now does. He moved to commit the clause, that slaves might be made liable to an equal tax with other imports; which he thought right, and which would remove one difficulty that had been started.

Mr. RUTLEDGE. If the Convention thinks that North Carolina, South Carolina, and Georgia, will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those states will never be such fools as to give up so important an interest. He was strenuous against striking out the section, and seconded the motion of Gen. Pinckney for a commitment.

Mr. GOUVERNEUR MORRIS wished the whole subject to be committed, including the clauses relating to taxes on exports and to a navigation act. These things may form a bargain among the Northern and Southern States. . . .

FOREIGNERS

[August 9] Mr. GOUVERNEUR MORRIS moved to insert fourteen instead of four years' citizenship, as a qualification for senators; urging the danger of admitting strangers into our public councils.

Mr. PINCKNEY seconded him.

Mr. ELLSWORTH was opposed to the motion, as discouraging meritorious aliens from emigrating to this country.

Mr. PINCKNEY. As the Senate is to have the power of making treaties and managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject, who made it death for any stranger to intrude his voice into their legislative proceedings.

Col. MASON highly approved of the policy of the motion. Were it not that many, not natives of this country, had acquired great credit during the revolution, he should be for restraining the eligibility into the Senate to natives.

Mr. MADISON was not averse to some restrictions on this subject, but could never agree to the proposed amendment. He thought any restriction, however, in the *Constitution*, unnecessary and improper:—unnecessary, because the national legislature is to have the right of regulating naturalization, and can by virtue thereof fix different periods of residence, as conditions of enjoying different privileges of citizenship;—improper, because it will give a tincture of illiberality to the Constitution; because it will put it out of the power of the national legislature, even by special acts of naturalization, to confer the full rank of citizens on meritorious strangers; and because it will discourage the most desirable class of people from emigrating to the United States. Should the proposed Constitution have the intended effect of giving stability and reputation to our government, great numbers of respectable Europeans, men who love liberty, and wish to partake its blessings,

will be ready to transfer their fortunes hither. All such would feel the mortification of being marked with suspicious incapacitations, though they should not covet the public honors. He was not apprehensive that any dangerous number of strangers would be appointed by the state legislatures, if they were left at liberty to do so: nor that foreign powers would make use of strangers, as instruments for their purposes. Their bribes would be expended on men whose circumstances would rather stifle than excite jealousy and watchfulness in the public.

Mr. BUTLER was decidedly opposed to the admission of foreigners without a long residence in the country. They bring with them, not only attachments to other countries, but ideas of government so distinct from ours, that in every point of view they are dangerous. He acknowledged that, if he himself had been called into public life within a short time after his coming to America, his foreign habits, opinions, and attachments, would have rendered him an improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject.

Dr. FRANKLIN was not against a reasonable time, but should be very sorry to see any thing like illiberality inserted in the Constitution. The people in Europe are friendly to this country. Even in the country with which we have been lately at war, we have now, and had during the war, a great many friends, not only among the people at large, but in both Houses of Parliament. In every other country in Europe, all the people are our friends. We found in the course of the revolution that many strangers served us faithfully, and that many natives took part against their country. When foreigners, after looking about for some other country in which they can obtain more happiness, give a preference to ours, it is a proof of attachment which ought to excite our confidence and affection.

Mr. RANDOLPH did not know but it might be problematical whether emigrations to this country were, on the whole, useful or not, but he could never agree to the motion for disabling them, for fourteen years, to participate in the public honors. He reminded the Convention of the language held by our patriots during the revolution, and the principles laid down in all our American constitutions. Many foreigners may have fixed their fortunes among us, under the faith of these invitations. All persons under

this description, with all others who would be affected by such a regulation, would enlist themselves under the banners of hostility to the proposed system. He would go as far as seven years, but no farther.

Mr. WILSON said, he rose with feelings which were perhaps peculiar; mentioning the circumstances of his not being a native, and the possibility, if the ideas of some gentlemen should be pursued, of his being incapacitated from holding a place under the very Constitution which he had shared in the trust of making. He remarked the illiberal complexion which the motion would give to the system, and the effect which a good system would have in inviting meritorious foreigners among us, and the discouragement and mortification they must feel from the degrading discrimination now proposed. He had himself experienced this mortification. On his removal into Maryland, he found himself, from defect of residence, under certain legal incapacities which never ceased to produce chagrin, though he assuredly did not desire, and would not have accepted, the offices to which they related. To be appointed to a place may be matter of indifference. To be incapable of being appointed is a circumstance grating and mortifying.

A BILL OF RIGHTS

[September 12] Mr. GERRY urged the necessity of juries to guard against corrupt judges. He proposed that the committee last appointed should be directed to provide a clause for securing the trial by juries.

Col. MASON perceived the difficulty mentioned by Mr. Gorham. The jury cases cannot be specified. A general principle laid down, on this and some other points, would be sufficient. He wished the plan had been prefaced with a bill of rights, and would second a motion, if made for the purpose. It would give great quiet to the people, and, with the aid of the state declarations, a bill might be prepared in a few hours.

Mr. GERRY concurred in the idea, and moved for a committee to prepare a bill of rights.

Col. MASON seconded the motion.

Mr. SHERMAN was for securing the rights of the people, where requisite. The state declarations of rights are not repealed

by this Constitution, and, being in force, are sufficient. There are many cases, where juries are proper, which cannot be discriminated. The legislature may be safely trusted.

Col. MASON. The laws of the United States are to be paramount to state bills of rights.

On the question for a committee to prepare a bill of rights,—

New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, ay, 5; Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 5; Massachusetts, absent. . . .

THE EXECUTIVE

[June 1] The *committee of the whole* proceeded to the *seventh resolution, that a national executive be instituted, to be chosen by the national legislature for the term of years, &c., to be ineligible thereafter, to possess the executive powers of Congress, &c.*

Mr. PINCKNEY was for a vigorous executive, but was afraid the executive powers of the existing Congress might extend to peace and war, &c.; which would render the executive a monarchy of the worst kind, to wit, an elective one.

Mr. WILSON moved that the executive consist of a single person.

Mr. C. PINCKNEY seconded the motion, so as to read "that a national executive, to consist of a single person, be instituted."

A considerable pause ensuing, and the chairman asking if he should put the question, Dr. FRANKLIN observed, that it was a point of great importance, and wished that the gentlemen would deliver their sentiments on it before the question was put.

Mr. RUTLEDGE animadverted on the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded, by having frankly disclosed their opinions, from afterwards changing them, which he did not take to be at all the case. He said he was for vesting the executive power in a single person, though he was not for giving him the power of war and peace. A single man would feel the greatest responsibility, and administer the public affairs best.

Mr. SHERMAN said, he considered the executive magistracy as nothing more than an institution for carrying the will of the legislature into effect; that the person or persons ought to be ap-

pointed by, and accountable to, the legislature only, which was the depository of the supreme will of the society. As they were the best judges of the business which ought to be done by the executive department, and consequently of the number necessary from time to time for doing it, he wished the number might not be fixed, but that the legislature should be at liberty to appoint one or more, as experience might dictate.

Mr. WILSON preferred a single magistrate, as giving most energy, despatch, and responsibility, to the office. He did not consider the prerogatives of the British monarch as a proper guide in defining the executive powers. Some of these prerogatives were of a legislative nature; among others, that of war and peace, &c. The only powers he considered strictly executive were those of executing the laws, and appointing officers, not appertaining to, and appointed by, the legislature.

Mr. GERRY favored the policy of annexing a council to the executive, in order to give weight and inspire confidence.

Mr. RANDOLPH strenuously opposed a unity in the executive magistracy. He regarded it as the fœtus of monarchy. We had, he said, no motive to be governed by the British government as our prototype. He did not mean, however, to throw censure on that excellent fabric. If we were in a situation to copy it, he did not know that he should be opposed to it; but the fixed genius of the people of America required a different form of government. He could not see why the great requisites for the executive department,—vigor, despatch, and responsibility,—could not be found in three men, as well as in one man. The executive ought to be independent. It ought, therefore, in order to support its independence, to consist of more than one.

Mr. WILSON said, that unity in the executive, instead of being the fœtus of monarchy, would be the best safeguard against tyranny. He repeated, that he was not governed by the British model, which was inapplicable to the situation of this country, the extent of which was so great, and the manners so republican, that nothing but a great confederated republic would do for it. . . .

[June 4] Mr. GERRY'S proposition being now before the committee, Mr. WILSON and Mr. HAMILTON move, that the last part of it (viz., "which shall not be afterwards passed by parts of each branch of the national legislature") be struck out, so

as to give the executive an absolute negative on the laws. There was no danger, they thought, of such a power being too much exercised. It was mentioned by Col. HAMILTON that the king of Great Britain had not exerted his negative since the revolution.

Mr. GERRY sees no necessity for so great a control over the legislature, as the best men in the community would be comprised in the two branches of it.

Dr. FRANKLIN said, he was sorry to differ from his colleague, for whom he had a very great respect, on any occasion, but he could not help it on this. He had had some experience of this check in the executive on the legislature, under the proprietary government of Pennsylvania. The negative of the governor was constantly made use of to extort money. No good law whatever could be passed without a private bargain with him. An increase of his salary, or some donation, was always made a condition; till at last it became the regular practice to have orders in his favor, on the treasury, presented along with the bills to be signed, so that he might actually receive the former before he should sign the latter. When the Indians were scalping the western people, and notice of it arrived, the concurrence of the governor in the means of self-defence could not be got till it was agreed that his estate should be exempted from taxation; so that the people were to fight for the security of his property, whilst he was to bear no share of the burden. This was a mischievous sort of check. If the executive was to have a council, such a power would be less objectionable. It was true, the king of Great Britain had not, as was said, exerted his negative since the revolution; but that matter was easily explained. The bribes and emoluments now given to the members of Parliament rendered it unnecessary, every thing being done according to the will of the ministers. He was afraid, if a negative should be given as proposed, that more power and money would be demanded, till at last enough would be got to influence and bribe the legislature into a complete subjection to the will of the executive.

Mr. SHERMAN was against enabling any one man to stop the will of the whole. No one man could be found so far above all the rest in wisdom. He thought we ought to avail ourselves of his wisdom in revising the laws, but not permit him to overrule the decided and cool opinions of the legislature.

Mr. MADISON supposed, that, if a proper proportion of each branch should be required to overrule the objections of the executive, it would answer the same purpose as an absolute negative. It would rarely, if ever, happen that the executive, constituted as ours is proposed to be, would have firmness enough to resist the legislature, unless backed by a certain part of the body itself. The king of Great Britain, with all his splendid attributes, would not be able to withstand the unanimous and eager wishes of both Houses of Parliament. To give such a prerogative would certainly be obnoxious to the temper of this country—its present temper at least.

Mr. WILSON believed, as others did, that this power would seldom be used. The legislature would know that such a power existed, and would refrain from such laws as it would be sure to defeat. Its silent operation would therefore preserve harmony and prevent mischief. The case of Pennsylvania formerly was very different from its present case. The executive was not then, as now, to be appointed by the people. It will not in this case, as in the one cited, be supported by the head of a great empire, actuated by a different and sometimes opposite interest. The salary, too, is now proposed to be fixed by the Constitution, or, if Dr. Franklin's idea should be adopted, all salary whatever interdicted. The requiring a large proportion of each House to overrule the executive check might do in peaceable times; but there might be tempestuous moments in which animosities may run high between the executive and legislative branches, and in which the former ought to be able to defend itself.

Mr. BUTLER had been in favor of a single executive magistrate; but could he have entertained an idea that a complete negative on the laws was to be given him, he certainly should have acted very differently. It had been observed, that in all countries the executive power is in a constant course of increase. This was certainly the case in Great Britain. Gentlemen seemed to think that we had nothing to apprehend from an abuse of the executive power. But why might not a Catiline or a Cromwell arise in this country as well as in others?

Mr. BEDFORD was opposed to every check on the legislature, even the council of revision first proposed. He thought it would be sufficient to mark out in the Constitution the boundaries to the legislative authority, which would give all the requisite se-

curity to the rights of the other departments. The representatives of the people were the best judges of what was for their interest, and ought to be under no external control whatever. The two branches would produce a sufficient control within the legislature itself.

Col. MASON observed, that a vote had already passed, he found—he was out at the time—for vesting the executive powers in a single person. Among these powers was that of appointing to offices in certain cases. The probable abuses of a negative had been well explained by Dr. Franklin, as proved by experience, the best of all tests. Will not the same door be opened here? The executive may refuse its assent to necessary measures, till new appointments shall be referred to him; and, having by degrees engrossed all these into his own hands, the American executive, like the British, will, by bribery and influence, save himself the trouble and odium of exerting his negative afterwards. We are, Mr. Chairman, going very far in this business. We are not indeed constituting a British government, but a more dangerous monarchy—an elective one. We are introducing a new principle into our system, and not necessary, as in the British government, where the executive has greater rights to defend. Do gentlemen mean to pave the way to hereditary monarchy? Do they flatter themselves that the people will ever consent to such an innovation? If they do, I venture to tell them, they are mistaken. The people never will consent. And do gentlemen consider the danger of delay, and the still greater danger of a rejection, not for a moment, but forever, of the plan which shall be proposed to them? Notwithstanding the oppression and injustice experienced among us from democracy, the genius of the people is in favor of it, and the genius of the people must be consulted. He could not but consider the federal system as in effect dissolved by the appointment of this Convention to devise a better one. And do gentlemen look forward to the dangerous interval between the extinction of an old, and the establishment of a new government, and to the scenes of confusion which may ensue? He hoped that nothing like a monarchy would ever be attempted in this country. A hatred to its oppressions had carried the people through the late revolution. Will it not be enough to enable the executive to suspend offensive laws, till they shall be coolly revised, and the objections to them overruled by a greater majority than was re-

quired in the first instance? He never could agree to give up all the rights of the people to a single magistrate. If more than one had been fixed on, greater powers might have been intrusted to the executive. He hoped this attempt to give such powers would have its weight hereafter, as an argument for increasing the number of the executive. . . .

[July 17] Mr. GOUVERNEUR MORRIS. It is said that, in case of an election by the people, the populous states will combine and elect whom they please. Just the reverse. The people of such states cannot combine. If there be any combination, it must be among their representatives in the legislature. It is said, the people will be led by a few designing men. This might happen in a small district. It can never happen throughout the continent. In the election of a governor of New York, it sometimes is the case, in particular spots, that the activity and intrigues of little partisans are successful; but the general voice of the state is never influenced by such artifices. It is said, the multitude will be uninformed. It is true, they would be uninformed of what passed in the legislative conclave, if the election were to be made there; but they will not be uninformed of those great and illustrious characters which have merited their esteem and confidence. If the executive be chosen by the national legislature, he will not be independent of it; and, if not independent, usurpation and tyranny on the part of the legislature will be the consequence. This was the case in England in the last century. It has been the case in Holland, where their senates have engrossed all power. It has been the case every where. He was surprised that an election by the people at large should ever have been likened to the Polish election of the first magistrate. An election by the legislature will bear a real likeness to the election by the diet of Poland. The great must be the electors in both cases, and the corruption and cabal, which are known to characterize the one, would soon find their way into the other. Appointments made by numerous bodies are always worse than those made by single responsible individuals, or by the people at large.

Col. MASON. It is curious to remark the different language held at different times. At one moment we are told that the legislature is entitled to thorough confidence, and to indefinite power. At another, that it will be governed by intrigue and corruption, and cannot be trusted at all. But, not to dwell on this incon-

sistency, he would observe, that a government which is to last ought at least to be practicable. Would this be the case if the proposed election should be left to the people at large? He conceived it would be as unnatural to refer the choice of a proper character for chief magistrate to the people, as it would to refer a trial of colors to a blind man. The extent of the country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the candidates.

Mr. WILSON could not see the contrariety stated by (Col. Mason). The legislature might deserve confidence in some respects, and distrust in others. In acts which were to affect them and their constituents precisely alike, confidence was due; in others, jealousy was warranted. In the appointment to great offices, where the legislature might feel many motives not common to the public, confidence was surely misplaced. This branch of business, it was notorious, was the most corruptly managed of any that had been committed to legislative bodies. . . .

[July 19] Mr. MADISON. If it be a fundamental principle of free government, that the legislative, executive, and judiciary powers should be *separately* exercised, it is equally so that they be *independently* exercised. There is the same, and perhaps greater, reason why the executive should be independent of the legislature, than why the judiciary should. A coalition of the two former powers would be more immediately and certainly dangerous to public liberty. It is essential, then, that the appointment of the executive should either be drawn from some source, or held by some tenure, that will give him a free agency with regard to the legislature. This could not be, if he was to be appointable, from time to time, by the legislature. It was not clear that an appointment in the first instance, even with an ineligibility afterwards, would not establish an improper connection between the two departments. Certain it was, that the appointment would be attended with intrigues and contentions that ought not to be unnecessarily admitted. He was disposed, for these reasons, to refer the appointment to some other source. The people at large was, in his opinion, the fittest in itself. It would be as likely as any that could be devised to produce an executive magistrate of distinguished character. The people generally could only know and vote for some citizen whose merits had rendered him an object of general attention and esteem. There was one difficulty, however, of a

serious nature, attending an immediate choice by the people. The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election, on the score of the negroes. The substitution of electors obviated this difficulty, and seemed, on the whole, to be liable to fewest objections.

Mr. GERRY. If the executive is to be elected by the legislature, he certainly ought not to be reëligible. This would make him absolutely dependent. He was against a popular election. The people are uninformed, and would be misled by a few designing men. He urged the expediency of an appointment of the executive by electors to be chosen by the state executives. The people of the states will then choose the first branch, the legislatures of the states the second branch, of the national legislature; and the executives of the states the national executive. This, he thought, would form a strong attachment in the states to the national system. The popular mode of electing the chief magistrate would certainly be the worst of all. If he should be so elected, and should do his duty, he will be turned out for it, like Governor Bowdoin in Massachusetts, and President Sullivan in New Hampshire. . . .

[July 17] Mr. MADISON. If it be essential to the preservation of liberty that the legislative, executive, and judiciary powers be separate, it is essential to a maintenance of the separation, that they should be independent of each other. . . .

Mr. MADISON was not apprehensive of being thought to favor any step towards monarchy. The real object with him was to prevent its introduction. Experience had proved a tendency in our government to throw all power into the legislative vortex. The executives of the states are in general little more than ciphers; the legislatures omnipotent. If no effectual check be devised for restraining the instability and encroachments of the latter, a revolution of some kind or other would be inevitable. The preservation of republican government, therefore, required some expedient for the purpose, but required evidently, at the same time, that in devising it, the genuine principles of that form should be kept in view. . . .

THE LEGISLATURE

[May 31] *In the committee of the whole* on Mr. RANDOLPH'S resolutions,—the third resolution, "*that the national legislature ought to consist of two branches,*" was agreed to without debate, or dissent, except that of Pennsylvania,—given probably from complaisance to Dr. Franklin, who was understood to be partial to a single house of legislation.

The fourth resolution, first clause, "*that the members of the first branch of the national legislature ought to be elected by the people of the several states,*" being taken up,—

Mr. SHERMAN opposed the election by the people, insisting that it ought to be by the state legislatures. The people, he said, immediately, should have as little to do as may be about the government. They want information, and are constantly liable to be misled.

Mr. GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts, it had been fully confirmed by experience, that they are daily misled into the most baneful measure and opinions, by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of government. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamor in Massachusetts for the reduction of salaries, and the attack made on that of the governor, though secured by the spirit of the constitution itself. He had, he said, been too republican heretofore: he was still, however, republican, but had been taught by experience the danger of the levelling spirit.

Mr. MASON argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the government. It was, so to speak, to be our House of Commons. It ought to know and sympathize with every part of the community, and ought therefore to be taken, not only from different parts of the whole republic, but also from different districts of the larger members of it; which had in several instances, particularly in Virginia, different interests and views arising from difference of produce, of habits &c. &c. He admitted that we had been too democratic, but was afraid

we should incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy; considering that, however affluent their circumstances, or elevated their situations, might be, the course of a few years not only might, but certainly would, distribute their posterity throughout the lowest classes of society. Every selfish motive, therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest, than of the highest, order of citizens.

Mr. WILSON contended strenuously for drawing the most numerous branch of the legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government, this confidence was peculiarly essential. He also thought it wrong to increase the weight of the state legislatures by making them the electors of the national legislature. All interference between the general and local governments should be obviated as much as possible. On examination, it would be found that the opposition of states to federal measures had proceeded much more from the officers of the states than from the people at large.

Mr. MADISON considered the popular election of one branch of the national legislature as essential to every plan of free government. He observed, that, in some of the states, one branch of the legislature was composed of men already removed from the people by an intervening body of electors; that, if the first branch of the general legislature should be elected by the state legislatures, the second branch elected by the first, the executive by the second together with the first, and other appointments again made for subordinate purposes by the executive, the people would be lost sight of altogether, and the necessary sympathy between them and their rulers and officers too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the legislature, and in the executive and judiciary branches of the government. He thought, too, that the great

fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the legislatures.

Mr. GERRY did not like the election by the people. The maxims taken from the British constitution were often fallacious when applied to our situation, which was extremely different. Experience, he said, had shown that the state legislatures, drawn immediately from the people, did not always possess their confidence. He had no objection, however, to an election by the people, if it were so qualified that men of honor and character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number, out of which the state legislatures should be bound to choose.

Mr. BUTLER thought an election by the people an impracticable mode. . . .

[June 12] Mr. SPAIGHT moved to fill the blank for the duration of the appointments to the second branch of the national legislature with the words "seven years."

Mr. SHERMAN thought seven years too long. He grounded his opposition, he said, on the principle that, if they did their duty well, they would be reëlected; and if they acted amiss, an earlier opportunity should be allowed for getting rid of them. He preferred five years, which would be between the terms of the first branch and of the executive.

Mr. PIERCE proposed three years. Seven years would raise an alarm. Great mischiefs have arisen in England from their septennial act, which was reprobated by most of their patriotic statesmen.

Mr. RANDOLPH was for the term of seven years. The democratic licentiousness of the state legislatures proved the necessity of a firm Senate. The object of this second branch is to control the democratic branch of the national legislature. If it be not a firm body, the other branch, being more numerous, and coming immediately from the people, will overwhelm it. The Senate of Maryland, constituted on like principles, had been scarcely able to stem the popular torrent. No mischief can be apprehended, as the concurrence of the other branch, and in some measure of the executive, will in all cases be necessary. A firmness and independence may be the more necessary, also, in this branch, as it ought to guard the Constitution against encroachments of the

executive, who will be apt to form combinations with the demagogues of the popular branch.

Mr. MADISON considered seven years as a term by no means too long. What we wished was, to give to the government that stability which was every where called for, and which the enemies of the republican form alleged to be inconsistent with its nature. He was not afraid of giving too much stability, by the term of seven years. His fear was, that the popular branch would still be too great an overmatch for it. It was to be much lamented that we had so little direct experience to guide us. The constitution of Maryland was the only one that bore any analogy to this part of the plan. In no instance had the Senate of Maryland created just suspicions of danger from it. In some instances, perhaps, it may have erred by yielding to the House of Delegates. In every instance of their opposition to the measures of the House of Delegates, they had had with them the suffrages of the most enlightened and impartial people of the other states, as well as of their own. In the states where the Senates were chosen in the same manner as the other branches of the legislature, and held their seats for four years, the institution was found to be no check whatever against the instabilities of the other branches. . . .

[June 26] Mr. MADISON. In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were,—first, to protect the people against their rulers; secondly, to protect the people against the transient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would first be aware, that those charged with the public happiness might betray their trust. An obvious precaution against this danger would be, to divide the trust between different bodies of men, who might watch and check each other. In this they would be governed by the same prudence which has prevailed in organizing the subordinate departments of government, where all business liable to abuses is made to pass through separate hands, the one being a check on the other. It would next occur to such a people, that they themselves were liable to temporary errors, through want of information as to their true interest; and that men chosen for a short term, and employed but a small portion of that in public affairs, might

err from the same cause. This reflection would naturally suggest, that the government be so constituted as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such an occasion, would be, that they themselves, as well as a numerous body of representatives, were liable to err, also, from fickleness and passion. A necessary fence against this danger would be, to select a portion of enlightened citizens, whose limited number, and firmness, might seasonably interpose against impetuous counsels. It ought, finally, to occur to a people deliberating on a government for themselves, that, as different interests necessarily result from the liberty meant to be secured, the major interest might, under sudden impulses, be tempted to commit injustice on the minority. In all civilized countries the people fall into different classes, having a real or supposed difference of interests. There will be creditors and debtors; farmers, merchants, and manufacturers. There will be, particularly, the distinction of rich and poor. It was true, as had been observed, (by Mr. Pinckney,) we had not among us those hereditary distinctions of rank which were a great source of the contests in the ancient governments, as well as the modern states, of Europe; nor those extremes of wealth or poverty which characterize the latter. We cannot, however, be regarded, even at this time, as one homogeneous mass, in which every thing that affects a part will affect in the same manner the whole. In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this country; but symptoms of a levelling spirit, as we have understood, have sufficiently appeared, in a certain quarter, to give notice of the future danger. How is this danger to be guarded against, on the republican principles; how is the danger, in all cases of interested coalition, to oppress the minority, to be guarded against? Among other means, by the establishment of a body, in the government, sufficiently respectable for its wisdom and virtue to aid, on such

emergencies, the preponderance of justice, by throwing its weight into that scale. Such being the objects of the second branch in the proposed government, he thought a considerable duration ought to be given to it. He did not conceive that the term of nine years could threaten any real danger; but, in pursuing his particular ideas on the subject, he should require that the long term allowed to the second branch, should not commence till such a period of life as would render a perpetual disqualification to be reëlected, little inconvenience, either in a public or private view. He observed, that, as it was more than probable we were now digesting a plan which, in its operation, would decide forever the fate of republican government, we ought, not only to provide every guard to liberty that its preservation could require, but be equally careful to supply the defects which our own experience had particularly pointed out.

Mr. SHERMAN. Government is instituted for those who live under it. It ought, therefore, to be so constituted as not to be dangerous to their liberties. The more permanency it has, the worse, if it be a bad government. Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to the government, by preserving that good behavior, because it insures their reëlection. In Connecticut, elections have been very frequent, yet great stability and uniformity, both as to persons and measures, have been experienced from its original establishment to the present time—a period of more than a hundred and thirty years. He wished to have provision made for steadiness and wisdom, in the system to be adopted; but he thought six, or four, years would be sufficient. He should be content with either.

Mr. READ wished it to be observed, by the small states, that it was their interest that we should become one people as much as possible; that state attachments should be extinguished as much as possible; that the Senate should be so constituted as to have the feelings of citizens of the whole.

Mr. HAMILTON. He did not mean to enter particularly into the subject. He concurred with Mr. Madison in thinking we were now to decide forever the fate of republican government; and that if we did not give to that form due stability and wisdom, it would be disgraced and lost among ourselves, disgraced and lost to mankind forever. He acknowledged himself not to think

favorably of republican government; but addressed his remarks to those who did think favorably of it, in order to prevail on them to tone their government as high as possible. He professed himself to be as zealous an advocate for liberty as any man whatever; and trusted he should be as willing a martyr to it, though he differed as to the form in which it was most eligible. He concurred, also, in the general observations of Mr. Madison on the subject, which might be supported by others if it were necessary. It was certainly true, that nothing like an equality of property existed; that an inequality would exist as long as liberty existed and that it would unavoidably result from that very liberty itself. This inequality of property constituted the great and fundamental distinction in society. When the tribunitial power had levelled the boundary between the *patricians and plebeians*, what followed? The distinction between rich and poor was substituted. He meant not, however, to enlarge on the subject. He rose principally to remark, that Mr. Sherman seemed not to recollect that one branch of the proposed government was so formed as to render it particularly the guardians of the poorer orders of citizens; nor to have adverted to the true causes of the stability which had been exemplified in Connecticut. Under the British system, as well as the federal, many of the great powers appertaining to government—particularly all those relating to foreign nations—were not in the hands of the government there. Their internal affairs, also, were extremely simple, owing to sundry causes, many of which were peculiar to that country. Of late the government had entirely given way to the people, and had in fact suspended many of its ordinary functions, in order to prevent those turbulent scenes which had appeared elsewhere. . . .

Col. MASON. He did not rise to make any motion, but to hint an idea which seemed to be proper for consideration. One important object in constituting the Senate was, to secure the rights of property. To give them weight and firmness for this purpose, a considerable duration in office was thought necessary. But a longer term than six years would be of no avail in this respect, if needy persons should be appointed. He suggested, therefore, the propriety of annexing to the office a qualification of property. He thought this would be very practicable; as the rules of taxation would supply a scale for measuring the degree of wealth possessed by every man. . . .

[July 2] Mr. GOUVERNEUR MORRIS. . . . The mode of appointing the second branch tended, he was sure, to defeat the object of it. What is this object? To check the precipitation, changeableness, and excesses, of the first branch. Every man of observation had seen in the democratic branches of the state legislatures, precipitation—in Congress, changeableness—in every department, excesses against personal liberty, private property, and personal safety. What qualities are necessary to constitute a check in this case? *Abilities* and *virtue* are equally necessary in both branches. Something more, then, is now wanted. In the first place, the checking branch must have a personal interest in checking the other branch. One interest must be opposed to another interest. Vices, as they exist, must be turned against each other. In the second place, it must have great personal property; it must have the aristocratic spirit; it must love to lord it through pride. Pride is, indeed, the great principle that actuates both the poor and the rich. It is this principle which in the former resists, in the latter abuses, authority. In the third place, it should be independent. In religion, the creature is apt to forget its Creator. That it is otherwise in political affairs, the late debates here are an unhappy proof. The aristocratic body should be as independent, and as firm, as the democratic. If the members of it are to revert to a dependence on the democratic choice, the democratic scale will preponderate. All the guards contrived by America have not restrained the senatorial branches of the legislatures from a servile complaisance to the democratic. If the second branch is to be dependent, we are better without it. To make it independent, it should be for life. It will then do wrong, it will be said. He believed so; he hoped so. The rich will strive to establish their dominion, and enslave the rest. They always did. They always will. The proper security against them is to form them into a separate interest. The two forces will then control each other. Let the rich mix with the poor, and, in a commercial country, they will establish an oligarchy. Take away commerce, and the democracy will triumph. Thus it has been all the world over. So it will be among us. Reason tells us we are but men; and we are not to expect any particular interference of Heaven in our favor. By thus combining, and setting apart, the aristocratic interest, the popular interest will be combined against it. There will be a mutual check and mutual security. In the fourth place, an in-

dependence for life involves the necessary permanency. If we change our measures, nobody will trust us; and how avoid a change of measures, but by avoiding a change of men? Ask any man if he confides in Congress—if he confides in the state of Pennsylvania—if he will lend his money, or enter into contract? He will tell you, no. He sees no stability. He can repose no confidence. If Great Britain were to explain her refusal to treat with us, the same reasoning would be employed. He disliked the exclusion of the second branch from holding offices. It is dangerous. It is like the imprudent exclusion of the military officers, during the war, from civil appointments. It deprives the executive of the principal source of influence. If danger be apprehended from the executive, what a left-handed way is this of obviating it! If the son, the brother, or the friend, can be appointed, the danger may be even increased, as the disqualified father, &c., can then boast of a disinterestedness which he does not possess. Besides, shall the best, the most able, the most virtuous citizens, not be permitted to hold office? Who then are to hold them? He was also against paying the senators. They will pay themselves, if they can. If they cannot, they will be rich, and can do without it. Of such the second branch ought to consist; and none but such can compose it, if they are not to be paid. He contended, that the executive should appoint the Senate, and fill up vacancies. This gets rid of the difficulty in the present question. You may begin with any ratio you please, it will come to the same thing. The members being independent, and for life, may be taken as well from one place as from another. It should be considered, too, how the scheme could be carried through the states. He hoped there was strength of mind enough in this House to look truth in the face. He did not hesitate, therefore, to say that loaves and fishes must bribe the demagogues. They must be made to expect higher offices under the general than the state governments. A Senate for life will be a noble bait. Without such captivating prospects, the popular leaders will oppose and defeat the plan. He perceived that the first branch was to be chosen by the people of the states, the second by those chosen by the people. Is not here a government by the states—a government by compact between Virginia in the first and second branch, Massachusetts in the first and second branch, &c.? This is going back to mere treaty. It is no government at all. It is altogether dependent on

the states, and will act over again the part which Congress has acted. A firm government alone can protect our liberties. He fears the influence of the rich. They will have the same effect here as elsewhere, if we do not, by such a government, keep them within their proper spheres. We should remember that the people never act from reason alone. The rich will take the advantage of their passions, and make these the instruments for opposing them. The result of the contest will be a violent aristocracy, or a more violent despotism. The schemes of the rich will be favored by the extent of the country. The people in such distant parts cannot communicate and act in concert. They will be the dupes of those who have more knowledge and intercourse. The only security against encroachments will be a select and sagacious body of men, instituted to watch against them on all sides. He meant only to hint these observations, without grounding any motion on them. . . .

THE JUDICIARY

[July 18] On the clause, "the judges of which to be appointed by the second branch of the national legislature,"—

Mr. GORHAM would prefer an appointment by the second branch to an appointment by the whole legislature; but he thought even that branch too numerous, and too little personally responsible, to insure a good choice. He suggested that the judges be appointed by the executive, with the advice and consent of the second branch, in the mode prescribed by the constitution of Massachusetts. This mode had been long practised in that country, and was found to answer perfectly well.

Mr. WILSON would still prefer an appointment by the executive; but if that could not be attained, would prefer, in the next place, the mode suggested by Mr. Gorham. He thought it his duty, however, to move, in the first instance, "that the judges be appointed by the executive."

Mr. GOUVERNEUR MORRIS seconded the motion.

Mr. L. MARTIN was strenuous for an appointment by the second branch. Being taken from all the states, it would be the best informed of characters, and most capable of making a fit choice.

Mr. SHERMAN concurred in the observations of Mr. Martin, adding that the judges ought to be diffused, which would be

more likely to be attended to by the second branch than by the executive.

Mr. MASON. The mode of appointing the judges may depend in some degree on the mode of trying impeachments of the executive. If the judges were to form a tribunal for that purpose, they surely ought not to be appointed by the executive. There were insuperable objections, besides, against referring the appointment to the executive. He mentioned, as one, that, as the seat of government must be in some one state, and as the executive would remain in office for a considerable time,—for four, five, or six years at least,—he would insensibly form local and personal attachments, within the particular state, that would deprive equal merit elsewhere of an equal chance of promotion.

Mr. GORHAM. As the executive will be responsible, in point of character at least, for a judicious and faithful discharge of his trust, he will be careful to look through all the states for proper characters. The senators will be as likely to form their attachments at the seat of government, where they reside, as the executive. If they cannot get the man of the particular state to which they may respectively belong, they will be indifferent to the rest. Public bodies feel no personal responsibility, and give full play to intrigue and cabal. Rhode Island is a full illustration of the insensibility to character produced by a participation of numbers in dishonorable measures, and of the length to which a public body may carry wickedness and cabal.

Mr. GOUVERNEUR MORRIS supposed it would be improper for an impeachment of the executive to be tried before the judges. The latter would in such cases be drawn into intrigues with the legislature, and an impartial trial would be frustrated. As they would be much about the seat of government, they might even be previously consulted, and arrangements might be made for a prosecution of the executive. He thought, therefore, that no argument could be drawn from the probability of such a plan of impeachments, against the motion before the House.

Mr. MADISON suggested, that the judges might be appointed by the executive, with the concurrence of one third at least of the second branch. This would unite the advantage of responsibility in the executive, with the security afforded in the second branch against any incautious or corrupt nomination by the executive. . . .

[July 21] Mr. WILSON moved, as an amendment to the tenth resolution, "that the supreme national judiciary should be associated with the executive in the revisionary power." This proposition had been before made and failed; but he was so confirmed by reflection in the opinion of its utility, that he thought it incumbent on him to make another effort. The judiciary ought to have an opportunity of remonstrating against projected encroachments on the people as well as on themselves. It had been said, that the judges, as expositors of the laws, would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive, and yet may not be so unconstitutional as to justify the judges in refusing to give them effect. Let them have a share in the revisionary power, and they will have an opportunity of taking notice of those characters of a law, and of counteracting, by the weight of their opinions, the improper views of the legislature. Mr. MADISON seconded the motion.

Mr. GORHAM did not see the advantage of employing the judges in this way. As judges, they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures. Nor can it be necessary as a security for their constitutional rights. The judges in England have no such additional provision for their defence; yet their jurisdiction is not invaded. He thought it would be best to let the executive alone be responsible, and at most to authorize him to call on the judges for their opinions.

Mr. ELLSWORTH approved heartily of the motion. The aid of the judges will give more wisdom and firmness to the executive. They will possess a systematic and accurate knowledge of the laws, which the executive cannot be expected always to possess. The law of nations, also, will frequently come into question. Of this the judges alone will have competent information.

Mr. MADISON considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the judiciary department by giving it an additional opportunity of defending itself against legislative encroachments. It would be useful to the executive, by inspiring additional confidence and firmness in exerting the revisionary power. It would be useful to the legislature, by the valuable assistance it would

give in preserving a consistency, conciseness, perspicuity, and technical propriety in the laws—qualities peculiarly necessary, and yet shamefully wanting in our republican codes. It would, moreover, be useful to the community at large, as an additional check against a pursuit of those unwise and unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged against the motion, it must be on the supposition that it tended to give too much strength, either to the executive, or judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended, that, notwithstanding this coöperation of the two departments, the legislature would still be an overmatch for them. Experience in all the states had evinced a powerful tendency in the legislature to absorb all power into its vortex. This was the real source of danger to the American constitutions, and suggested the necessity of giving every defensive authority to the other departments that was consistent with republican principles.

Mr. MASON said, he had always been a friend to this provision. It would give a confidence to the executive which he would not otherwise have, and without which the revisionary power would be of little avail.

Mr. GERRY did not expect to see this point, which had undergone full discussion, again revived. The object, he conceived, of the revisionary power was merely to secure the executive department against legislative encroachment. The executive, therefore, who will best know and be ready to defend his rights, ought alone to have the defence of them. The motion was liable to strong objections. It was combining and mixing together the legislative and the other departments. It was establishing an improper coalition between the executive and judiciary departments. It was making statesmen of the judges, and setting them up as the guardians of the rights of the people. He relied, for his part, on the representatives of the people, as the guardians of their rights and interests. It was making the expositors of the laws the legislators, which ought never to be done. A better expedient for correcting the laws would be to appoint, as had been done in Pennsylvania, a person or persons of proper skill, to draw bills for the legislature.

Mr. STRONG thought, with Mr. Gerry, that the power of making ought to be kept distinct from that of expounding the

laws. No maxim was better established. The judges, in exercising the function of expositors, might be influenced by the part they had taken in passing the laws. . . .

Mr. L. MARTIN considered the association of the judges with the executive as a dangerous innovation, as well as one that could not produce the particular advantage expected from it. A knowledge of mankind, and of legislative affairs, cannot be presumed to belong in a higher degree to the judges than to the legislature. And as to the constitutionality of laws, that point will come before the judges in their official character. In this character they have a negative on the laws. Join them with the executive in the revision, and they will have a double negative. It is necessary that the supreme judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating against popular measures of the legislature. . . .

Col. MASON observed, that the defence of the executive was not the sole object of the revisionary power. He expected even greater advantages from it. Notwithstanding the precautions taken in the constitution of the legislature, it would still so much resemble that of the individual states, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect, not only of hindering the final passage of such laws, but would discourage demagogues from attempting to get them passed. It has been said, (by Mr. L. Martin,) that if the judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of judges they would have one negative. He would reply, that in this capacity they could impede in one case only the operation of laws. They could declare an unconstitutional law void. But with regard to every law, however unjust, oppressive, or pernicious, that did not come plainly under this description, they would be under the necessity, as judges, to give it a free course. He wished the further use to be made of the judges of giving aid in preventing every improper law. Their aid will be the more valuable, as they are in the habit and practice of considering laws in their true principles and in all their consequences.

Mr. WILSON. The separation of the departments does not require that they should have separate objects, but that they

should act separately, though on the same objects. It is necessary that the two branches of the legislature should be separate and distinct, yet they are both to act precisely on the same object.

Mr. GERRY had rather give the executive an absolute negative for its own defence, than thus to blend together the judiciary and executive departments. It will bind them together in an offensive and defensive alliance against the legislature, and render the latter unwilling to enter into a contest with them. . .

ANTI-FEDERALIST ARGUMENTS

In most discussions of the political theory of this controversy, the arguments advanced by the opponents of ratification receive little or no attention. Yet the political ideas of the Anti-Federalists are of much more than temporary importance. They indicate the beginning of currents or thought and of sources of conflict which are even yet to be found in our political life. At the same time they were continuations and adaptations of theories developed during the Revolution.

The selections from the letter of Yates and Lansing and from the pamphlets of Mason and Gerry reflect the opinions of the members of the convention who opposed ratification. The extracts from the speeches in the Massachusetts ratifying convention are examples of the arguments put forward by the large number of obscure men who believed that the constitution would be dangerous to their liberties and to their powers of self government.

LETTER OF ROBERT YATES AND JOHN LANSING TO THE GOVERNOR OF NEW YORK[1]

1787

Sir,—We do ourselves the honor to advise your excellency, that in pursuance of concurrent resolutions of the honorable senate and assembly, we have, together with Mr. Hamilton, attended the convention, appointed for revising the articles of confederation, and reporting amendments to the same.

[1] *Secret Proceedings and Debates of the Convention Assembled at Philadelphia. . . .* From the notes taken by the late Robert Yates, Esq. Washington: Government Printing Office. 1909. Pp. 190–92.

It is with the sincerest concern we observe, that, in the prosecution of the important objects of our mission, we have been reduced to the disagreeable alternative, of either exceeding the powers delegated to us, and giving our assent to measures which we conceive destructive to the political happiness of the citizens of the United States, or opposing our opinions to that of a body of respectable men, to whom those citizens had given the most unequivocal proofs of confidence.—Thus circumstanced, under these impressions, to have hesitated, would have been to be culpable; we, therefore, gave the principles of the constitution, which has received the sanction of a majority of the convention, our decided and unreserved dissent; but we must candidly confess, that we should have been equally opposed to any system, however modified, which had in object the consolidation of the United States into one government.

We beg leave, briefly, to state some cogent reasons, which, among others, influenced us to decide against a consolidation of the states. These are reducible into two heads.

1st. The limited and well-defined powers under which we acted, and which could not, on any possible construction, embrace an idea of such magnitude, as to assent to a general constitution, in subversion of that of the state.

2d. A conviction of the impracticability of establishing a general government, pervading every part of the United States, and extending essential benefits to all.

Our powers were explicit, and confined to the sole and express purpose of revising the articles of confederation, and reporting such alterations and provisions therein, as should render the federal constitution adequate to the exigencies of government, and the preservation of the union.

From these expressions, we were led to believe, that a system of consolidated government could not in the remotest degree, have been in contemplation of the legislature of this state? for that so important a trust, as the adopting measures which tended to deprive the state government of its most essential rights of sovereignty, and to place it in a dependent situation, could not have been confided by implication; and the circumstance, that the acts of the convention were to receive a state approbation in the last resort, forcibly corroborated the opinion, that our powers could not involve the subversion of a constitution, which being

immediately derived from the people, could only be abolished by their express consent, and not by a legislature, possessing authority vested in them for its preservation. Nor could we suppose, that if it had been the intention of the legislature, to abrogate the existing confederation, they would, in such pointed terms, have directed the attention of their delegates to the revision and amendment of it, in total exclusion of every other idea.

Reasoning in this manner, we were of opinion, that the leading feature of every amendment, ought to be the preservation of the individual states, in their uncontrouled constitutional rights, and that in reserving these, a mode might have been devised of granting to the confederacy, the monies arising from a general system of revenue; the power of regulating commerce, and enforcing the observance of foreign treaties, and other necessary matters of less moment.

Exclusive of our objections originating from the want of power, we entertained an opinion, that a general government, however guarded by declarations of rights, or cautionary provisions, must unavoidably, in a short time, be productive of the destruction of civil liberty of such citizens who could be effectually coerced by it: by reason of the extensive territory of the United States, the dispersed situation of its inhabitants, and the insuperable difficulty of controuling or counteracting the views of a set of men (however unconstitutional and oppressive their acts might be) possessed of all the powers of government; and who from their remoteness from their constituents and necessary permanency of office, could not be supposed to be uniformly actuated by an attention to their welfare and happiness; that however wise and energetic the principles of the general government might be, the extremities of the United States could not be kept in due submission and obedience to its laws, at the distance of many hundred miles from the seat of government; that if the general legislature was composed of so numerous a body of men, as to represent the interests of all the inhabitants of the United States, in the usual and true ideas of representation, the expense of supporting it would become intolerably burdensome; and that if a few only were vested with a power of legislation, the interests of a great majority of the inhabitants of the United States, must necessarily be unknown; or if known, even in the first stages of the operations of the new government, unattended to.

These reasons were, in our opinion, conclusive against any system of consolidated government: to that recommended by the convention, we suppose most of them very forcibly apply.

It is not our intention to pursue this subject farther, than merely to explain our conduct in the discharge of the trust which the honorable the legislature reposed in us.—Interested, however, as we are, in common with our fellow citizens, in the result, we cannot forbear to declare, that we have the strongest apprehensions, that a government so organized, as that recommended by the convention, cannot afford that security to equal and permanent liberty, which we wished to make an invariable object of our pursuit.

We were not present at the completion of the new constitution; but before we left the convention, its principles were so well established, as to convince us, that no alteration was to be expected to conform it to our ideas of expediency and safety. A persuasion, that our further attendance would be fruitless and unavailing, rendered us less solicitous to return.

We have thus explained our motives for opposing the adoption of the national constitution, which we conceive it our duty to communicate to your excellency, to be submitted to the consideration of the honorable legislature.

We have the honor to be, with the greatest respect,

Your excellency's most obedient, and very humble servants,

ROBERT YATES,
JOHN LANSING, JUN.

His Excellency Governor Clinton.

GEORGE MASON

OBJECTIONS TO THE PROPOSED CONSTITUTION [1]

1787

There is no declaration of rights: and the laws of the general government being paramount to the laws and constitutions of the several states, the declarations of rights, in the separate states, are no security. Nor are the people secured even in the enjoyment

[1] P. L. Ford, *Pamphlets on the Constitution of the United States, published during its discussion by the people*, 1787–88. Brooklyn: 1888. Pp. 329–32.

of the benefit of the common law, which stands here upon no other foundation than its having been adopted by the respective acts forming the constitutions of the several states.

In the House of Representatives there is not the substance, but the shadow only of representation; which can never produce proper information in the legislature, or inspire confidence in the people.—The laws will, therefore, be generally made by men little concerned in, and unacquainted with their effects and consequences.

The Senate have the power of altering all money-bills, and of originating appropriations of money, and the salaries of the officers of their appointment, in conjunction with the President of the United States—Although they are not the representatives of the people, or amenable to them. These, with their other great powers, (viz. their powers in the appointment of ambassadors, and all public officers, in making treaties, and in trying all impeachments) their influence upon, and connection with, the supreme executive from these causes, their duration of office, and their being a constant existing body, almost continually sitting, joined with their being one complete branch of the legislature, will destroy any balance in the government, and enable them to accomplish what usurpations they please, upon the rights and liberties of the people.

The judiciary of the United States is so constructed and extended, as to absorb and destroy the judiciaries of the several states; thereby rendering laws as tedious, intricate, and expensive, and justice as unattainable by a great part of the community, as in England; and enabling the rich to oppress and ruin the poor.

The President of the United States has no constitutional council (a thing unknown in any safe and regular government.) He will therefore be unsupported by proper information and advice; and will generally be directed by minions and favorites—or he will become a tool to the Senate—or a council of state will grow out of the principal officers of the great departments—the worst and most dangerous of all ingredients for such a council, in a free country; for they may be induced to join in any dangerous or oppressive measures, to shelter themselves, and prevent an inquiry into their own misconduct in office. Whereas, had a constitutional council been formed (as was proposed) of six members, viz., two from the eastern, two from the middle, and two from the southern

states, to be appointed by vote of the states in the House of Representatives, with the same duration and rotation of office as the Senate, the executive would always have had safe and proper information and advice; the president of such a council might have acted as Vice-President of the United States, *pro tempore*, upon any vacancy or disability of the chief magistrate; and long continued sessions of the Senate, would in a great measure have been prevented. From this fatal defect of a constitutional council, has arisen the improper power of the Senate, in the appointment of the public officers, and the alarming dependence and connexion between that branch of the legislature and the supreme executive. Hence, also, sprung that unnecessary officer, the Vice-President, who, for want of other employment, is made President of the Senate; thereby dangerously blending the executive and legislative powers; besides always giving to some one of the states an unnecessary and unjust pre-eminence over the others.

The President of the United States has the unrestrained power of granting pardon for treason; which may be sometimes exercised to screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt. By declaring all treaties supreme laws of the land, the executive and the Senate have, in many cases, an exclusive power of legislation, which might have been avoided, by proper distinctions with respect to treaties, and requiring the assent of the House of Representatives, where it could be done with safety.

By requiring only a majority to make all commercial and navigation laws, the five southern states (whose produce and circumstances are totally different from those of the eight northern and eastern states) will be ruined: for such rigid and premature regulations may be made, as will enable the merchants of the northern and eastern states not only to demand an exorbitant freight, but to monopolize the purchase of the commodities, at their own price, for many years, to the great injury of the landed interest, and the impoverishment of the people: and the danger is the greater, as the gain on one side will be in proportion to the loss on the other. Whereas, requiring two-thirds of the members present in both houses, would have produced mutual moderation, promoted the general interest, and removed an insuperable objection to the adoption of the government.

Under their own construction of the general clause at the end of the enumerated powers, the Congress may grant monopolies in trade and commerce, constitute new crimes, inflict unusual and severe punishments, and extend their power as far as they shall think proper; so that the state legislatures have no security for the powers now presumed to remain to them; or the people for their rights. There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil cases, nor against the danger of standing armies in time of peace.

The state legislatures are restrained from laying export duties on their own produce—the general legislature is restrained from prohibiting the further importation of slaves for twenty odd years, though such importations render the United States weaker, more vulnerable, and less capable of defence. Both the general legislature, and the state legislatures are expressly prohibited making *ex post facto* laws, though there never was, nor can be, a legislature, but must and will make such laws, when necessity and the public safety require them, which will hereafter be a breach of all the constitutions in the union, and afford precedents for other innovations.

This government will commence in a moderate aristocracy; it is at present impossible to foresee whether it will, in its operation, produce a monarchy, or a corrupt oppressive aristocracy; it will most probably vibrate some years between the two, and then terminate in the one or the other.

ELBRIDGE GERRY

OBSERVATIONS ON THE NEW CONSTITUTION [1]

All writers on government agree, and the feelings of the human mind witness the truth of these political axioms, that man is born free and possessed of certain unalienable rights—that government is instituted for the protection, safety and happiness of the people, and not for the profit, honour, or private interest of any man, family, or class of men—That the origin of all power is in the people, and that they have an incontestible right to check the creatures of their own creation, vested with certain powers to guard the life, liberty and property of the community: And if

[1] P. L. Ford, *Pamphlets*, pp. 6–14.

certain selected bodies of men, deputed on these principles, determine contrary to the wishes and expectations of their constituents, the people have an undoubted right to reject their decisions, to call for a revision of their conduct, to depute others in their room, or if they think proper, to demand further time for deliberation on matters of the greatest moment: it therefore is an unwarrantable stretch of authority or influence, if any methods are taken to preclude this peaceful and reasonable mode of enquiry and decision. And it is with inexpressible anxiety, that many of the best friends of the Union of the States—to the peaceable and equal participation of the rights of nature, and to the glory and dignity of this country, behold the insiduous arts, and the strenuous efforts of the partisans of arbitrary power, by their vague definitions of the best established truths, endeavoring to envelope the mind in darkness the concomitant of slavery, and to lock the strong chains of domestic despotism on a country, which by the most glorious and successful struggles is but newly emancipated from the spectre of foreign dominion. . . .

. . . Some gentlemen, with laboured zeal, have spent much time in urging the necessity of government, from the embarrassments of trade—the want of respectability abroad and confidence of the public engagements at home:—These are obvious truths which no one denies; and there are few who do not unite in the general wish for the restoration of public faith, the revival of commerce, arts, agriculture, and industry, under a lenient, peaceable and energetick government: But the most sagacious advocates for the party have not by fair discussion, and rational argumentation, evinced the necessity of adopting this many headed monster; of such motley mixture, that its enemies cannot trace a feature of Democratick or Republican extract; nor have its friends the courage to denominate a Monarchy, an Aristocracy, or an Oligarchy, and the favoured bantling must have passed through the short period of its existence without a name, had not Mr. *Wilson*, in the fertility of his genius, suggested the happy epithet of a *Federal Republic*. . . .

2. There is no security in the profered system, either for the rights of conscience or the liberty of the Press: Despotism usually while it is gaining ground, will suffer men to think, say, or write what they please; but when once established, if it is thought necessary to subserve the purposes, of arbitrary power, the most

unjust restrictions may take place in the first instance, and an *imprimator* on the Press in the next, may silence the complaints, and forbid the most decent remonstrances of an injured and oppressed people.

3. There are no well defined limits of the Judiciary Powers, they seem to be left as a boundless ocean, that has broken over the chart of the Supreme Lawgiver, "*thus far shalt thou go and no further,*" and as they cannot be comprehended by the clearest capacity, or the most sagacious mind, it would be an Herculean labour to attempt to describe the dangers with which they are replete.

4. The Executive and the Legislative are so dangerously blended as to give just cause of alarm, and everything relative thereto, is couched in such ambiguous terms—in such vague and indefinite expression, as is a sufficient ground without any objection, for the reprobation of a system, that the authors dare not hazard to a clear investigation.

5. The abolition of trial by jury in civil causes.—This mode of trial the learned Judge Blackstone observes, "has been coeval with the first rudiments of civil government, that property, liberty and life, depend on maintaining in its legal force the constitutional trial by jury." . . .

6. Though it has been said by Mr. *Wilson* and many others, that a Standing-Army is necessary for the dignity and safety of America, yet freedom revolts at the idea, when the Divan, or the Despot, may draw out his dragoons to suppress the murmurs of a few, who may yet cherish those sublime principles which call forth the exertions, and lead to the best improvements of the human mind. It is hoped this country may yet be governed by milder methods than are usually displayed beneath the bannerets of military law.—Standing armies have been the nursery of vice and the bane of liberty from the Roman legions to the establishment of the artful Ximenes, and from the ruin of the Cortes of Spain, to the planting of the British cohorts in the capitals of America:—By the edicts of an authority vested in the sovereign power by the proposed constitution, the militia of the country, the bulwark of defence, and the security of national liberty if no longer under the controul of civil authority; but at the rescript of the Monarch, or the aristocracy, they may either be employed to extort the enormous sums that will be necessary to support

the civil list—to maintain the regalia of power—and the splendour of the most useless part of the community, or they may be sent into foreign countries for the fulfilment of treaties, stipulated by the President and two-thirds of the Senate.

7. Notwithstanding the delusory promise to guarantee a Republican form of government to every State in the Union—If the most discerning eye could discover any meaning at all in the engagement, there are no resources left for the support of internal government, or the liquidation of the debts of the State. Every source of revenue is in the monopoly of Congress, and if the several legislatures in their enfeebled state, should against their own feelings be necessitated to attempt a dry tax for the payment of their debts, and the support of internal police, even this may be required for the purposes of the general government.

8. As the new Congress are empowered to determine their own salaries, the requisitions for this purpose may not be very moderate, and the drain for public moneys will probably rise past all calculation: and it is to be feared when America has consolidated its despotism, the world will witness the truth of the assertion—"that the pomp of an Eastern monarch may impose on the vulgar who may estimate the force of a nation by the magnificence of its palaces; but the wise man judges differently, it is by that very magnificence he estimates its weakness. . . ."

9. There is no provision for a rotation, nor anything to prevent the perpetuity of office in the same hands for life; which by a little well timed bribery, will probably be done, to the exclusion of men of the best abilities from their share in the office of government.—By this neglect we lose the advantages of that check to the overbearing insolence of office, which by rendering him ineligible at certain periods, keeps the mind of man in equilibrio, and teaches him the feelings of the governed, and better qualifies him to govern in his turn.

10. The inhabitants of the United States, are liable to be dragged from the vicinity of their own country, or state, to answer the litigious or unjust suit of an adversary, on the most distant borders of the Continent: in short the appelate jurisdiction of the Supreme Federal Court, includes an unwarrantable stretch of power over the liberty, life, and property of the subject, through the wide Continent of America.

11. One Representative to thirty thousand inhabitants is a very inadequate representation; and every man who is not lost to all sense of freedom to his country, must reprobate the idea of Congress altering by law, or on any pretence whatever, interfering with any regulations for time, places, and manner of choosing our own Representatives.

12. If the sovereignty of America is designed to be elective, the surcumscribing the votes to only two electors in this State, and the same proportion in all the others, is nearly tantamount to the exclusion of the voice of the people in the choice of their first magistrate. It is vesting the choice solely in an aristocratic junto, who may easily combine in each State to place at the head of the Union the most convenient instrument for despotic sway.

13. A senate chosen for six years will, in most instances, be an appointment for life, as the influence of such a body over the minds of the people will be coequal to the extensive powers with which they are vested, and they will not only forget, but be forgotten by their constituents—a branch of the Supreme Legislature thus set beyond all responsibility is totally repugnant to every principle of a free government.

14. There is no provision by a bill of rights to guard against the dangerous encroachments of power in too many instances to be named: but I cannot pass over in silence the insecurity in which we are left with regard to warrants unsupported by evidence—the daring experiment of granting *writs of assistance* in a former arbitrary administration is not yet forgotten in the Massachusetts; nor can we be so ungrateful to the memory of the patriots who counteracted their operation, as so soon after their manly exertions to save us from such a detestable instrument of arbitrary power, to subject ourselves to the insolence of any petty revenue officer to enter our houses, search, insult, and seize at pleasure. We are told by a gentleman of too much virtue and real probity to suspect he has a design to deceive—"that the whole constitution is a declaration of rights,"—but mankind must think for themselves, and to many very judicious and discerning characters, the whole constitution with very few exceptions appears a perversion of the rights of particular states, and of private citizens.—But the gentleman goes on to tell us, "that the primary object is the general government, and that the rights of individuals are only incidentally mentioned, and that there was a clear im-

propriety in being very particular about them." But, asking pardon for dissenting from such respectable authority, who has been led into several mistakes, more from his prediliction in favour of certain modes of government, than from a want of understanding or veracity. The rights of individuals ought to be the primary object of all government, and cannot be too securely guarded by the most explicit declarations in their favor. This has been the opinion of the Hampdens, the Pyms, and many other illustrious names, that have stood forth in defence of English liberties; and even the Italian master in politicks, the subtle and renounced Machiavel acknowledges, that no republic ever yet stood on a stable foundation without satisfying the common people.

15. The difficulty, if not impracticability, of exercising the equal and equitable powers of government by a single legislature over an extent of territory that reaches from the Mississippi to the Western Lakes, and from them to the Atlantic Ocean, is an insuperable objection to the adoption of the new system.—Mr. *Hutchinson*, the great champion for arbitrary power, in the multitude of his machinations to subvert the liberties in this country, was obliged to acknowledge in one of his letters, that, "from the extent of country from north to south, the scheme of one government was impracticable." But if the authors of the present visionary project, can by the arts of deception, precipitation and address, obtain a majority of suffrages in the conventions of the states to try the hazardous experiment, they may then make the same inglorious boast with this insidious politician, who may perhaps be their model, that "the union of the colonies was pretty well broken, and that he hoped to never see it renewed."

16. It is an undisputed fact that not one legislature in the United States had the most distant idea when they first appointed members for a convention, entirely commercial, or when they afterwards authorized them to consider on some amendments of the Federal union, that they would without any warrant from their constituents, presume on so bold and daring a stride, as ultimately to destroy the state governments, and offer a *consolidated system*, irreversible but on conditions that the smallest degree of penetration must discover to be impracticable.

17. The first appearance of the article which declares the ratification of nine states sufficient for the establishment of the new system, wears the face of dissension, is a subversion of the union

of Confederated States, and tends to the introduction of anarchy and civil convulsions, and may be a means of involving the whole country in blood.

18. The mode in which this constitution is recommended to the people to judge without either the advice of Congress, or the legislatures of the several states is very reprehensible—it is an attempt to force it upon them before it could be thoroughly understood, and may leave us in that situation, that in the first moments of slavery in the minds of the people agitated by the remembrance of their lost liberties, will be like the sea in a tempest, that sweeps down every mound of security. . . .

SPEECHES OF MESSRS. SINGLETARY AND BARRELL IN THE MASSACHUSETTS CONVENTION, 1788 [1]

[101] Hon. Mr. SINGLETARY. Mr. President, I should not have troubled the Convention again, if some gentlemen had not called on them that were on the stage in the beginning of our troubles, in the year 1775. I was one of them. I have had the honor to be a member of the court all the time, Mr. President, and I say that, if any body had proposed such a constitution as this in that day, it would have been thrown away at once. It would not have been looked at. We contended with Great Britain, some said for a threepenny duty on tea; but it was not that; it was because they claimed a right to tax us and bind us in all cases whatever. And does not this Constitution do the same? Does it not take away all we have—all our property? Does it not lay *all* taxes, duties, imposts, and excises? And what more have we to give? They tell us Congress won't lay dry taxes upon us, but collect all the money they want by impost. I say there has always been a difficulty about impost. Whenever the General Court was going to lay an impost, they would tell us it was more than trade could bear, that it hurt the fair trader, and encouraged smuggling; and there will always be the same objection: they won't be able to raise money enough by impost, and then they will lay it on the land, and take all we have got. These lawyers, and men of learning, and moneyed men, that talk so finely, and

[1] *The Debates in the several State Conventions on the Adoption of the Federal Constitution.* . . . Collected and revised from contemporary publications, by Jonathan Elliot. Second edition. Philadelphia: J. B. Lippincott & Co. 1861. Vol. II.

gloss over matters so smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves; they expect to be the managers of this Constitution, and get all the power and all the money into their own hands, and then they will swallow up all us little folks, like the great *Leviathan*, Mr. President; yes, just as the whale swallowed up *Jonah*. This is what I am afraid of; but I won't say any more at present, but reserve the rest to another opportunity. . . .

[159] Mr. BARRELL, (of York.) Awed in the presence of this august assembly; conscious of my inability to express my mind fully on this important occasion; and sensible how little I must appear in the eyes of those giants in rhetoric, who have exhibited such a pompous display of declamation; without any of those talents calculated to draw attention; without the pleasing eloquence of Cicero, or the blaze of Demosthenian oratory,—I rise, sir, to discharge my duty to my constituents, who, I know, expect something more from me than merely a silent vote. With no pretensions to talents above the simple language adapted to the line of my calling,—the plain husbandman,—I hope the gentlemen who compose this honorable body will fully understand me when I attempt to speak my mind of the federal Constitution as it now stands. I wish, sir, to give my voice for its amendment before it can be salutary for our acceptance; because, sir, notwithstanding the Wilsonian oratory, and all the learned arguments I have seen written, notwithstanding the many labored speeches I have heard in its defence, and after the best investigation I am able to give this subject,—I fear it is pregnant with baneful effects, although I may not live to feel them.

Because, sir, as it now stands, Congress will be vested with more extensive powers than ever Great Britain exercised over us; too great, in my opinion, to intrust with any class of men, let their talents or virtues be ever so conspicuous, even though composed of such exalted, amiable characters as the great Washington; for, while we consider them as men of like passions, the same spontaneous, inherent thirst for power with ourselves, great and good as they may be, when they enter upon this all-important charge, what security can we have that they will continue so? And, were we sure they would continue the faithful guardians of our liberties, and prevent any infringement on the privileges of the people, what assurance can we have that such men will always

hold the reins of government—that their successors will be such? History tells us Rome was happy under Augustus, though wretched under Nero, who could have no greater power than Augustus; and yet this same Nero, when young in government, could shed tears on signing a death warrant, though afterwards he became so callous to the tender feelings of humanity as to behold, with pleasure, Rome in flames.

Because, sir, I think that six years is too long a term for any set of men to be at the helm of government; for in that time they may get so firmly rooted, and their influence be so great, as to continue themselves for life.

Because, sir, I am not certain we are able to support the additional expense of such a government.

Because, sir, I think a Continental collector will not be so likely to do us justice in collecting the taxes, as collectors of our own.

Because, sir, I think a frame of government on which all laws are founded, should be so simple and explicit, that the most illiterate may understand it; whereas this appears to me so obscure and ambiguous, that the most capacious mind cannot fully comprehend it.

Because, sir, the duties of excise and impost, and to be taxed besides, appear too great a sacrifice; and when we have given them up, what shall we have to pay our debts, but a dry tax?

Because, sir, I do not think this will produce the efficient government we are in pursuit of.

Because, sir, they fix their own salaries, without allowing any control.

And because, sir, I think such a government may be disagreeable to men with the high notions of liberty we Americans have.

And, sir, I could wish this Constitution had not been, in some parts of the continent, hurried on, like the driving of Jehu, very furiously; for such important transactions should be without force, and with cool deliberation. These, sir, were my objections, and those of my constituents, as they occur to my memory; some of which have been removed, in the course of the debates, by the ingenious reasonings of the speakers. I wish I could say the whole were. But, after all, there are some yet remaining on my mind, enough to convince me, excellent as this system is, in some respects it needs alterations; therefore I think it becomes us, as

wise men, as the faithful guardians of the people's rights, and as we wish well to posterity, to propose such amendments as will secure to us and ours that liberty without which life is a burden. . . .

THOMAS JEFFERSON ON THE PROPOSED CONSTITUTION

Jefferson was Minister to France during the time in which the constitution was framed and adopted. However, he was greatly interested in the work of the convention and wrote home many letters about it. His opinion is fairly representative of the large number of people who approved of the plan in general but disapproved of certain sections or omissions. These particular letters also illustrate interesting aspects of his political faith.

LETTER TO WILLIAM S. SMITH [1]

Paris, November 13, 1787

. . . I do not know whether it is to yourself or Mr. Adams I am to give my thanks for the copy of the new constitution. I beg leave through you to place them where due. It will be yet three weeks before I shall receive them from America. There are very good articles in it: & very bad. I do not know which preponderate. What we have lately read in the history of Holland, in the chapter on the Stadtholder, would have sufficed to set me against a chief magistrate eligible for a long duration, if I had ever been disposed towards one: & what we have always read of the elections of Polish kings should have forever excluded the idea of one continuable for life. Wonderful is the effect of impudent & persevering lying. The British ministry have so long hired their gazetteers to repeat and model into every form lies about our being in anarchy, that the world has at length believed them, the English nation has believed them, the ministers themselves have come to believe them, & what is more wonderful, we have believed them ourselves. Yet where does this anarchy exist? Where did it ever exist, except in the single instance of Massachusetts? And can history produce an instance of rebellion so honourably conducted? I say nothing of its motives. They were founded

[1] *The Writings of Thomas Jefferson.* Edited by Paul L. Ford. New York: G. P. Putnam's Sons. 1894. Vol. IV, pp. 466–67.

in ignorance, not wickedness. God forbid we should ever be 20 years without such a rebellion. The people cannot be all, & always, well informed. The part which is wrong will be discontented in proportion to the importance of the facts they misconceive. If they remain quiet under such misconceptions it is a lethargy, the forerunner of death to the public liberty. We have had 13. states independent 11. years. There has been one rebellion. That comes to one rebellion in a century & a half for each state. What country before ever existed a century & half without a rebellion? & what country can preserve it's liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance? Let them take arms. The remedy is to set them right as to facts, pardon & pacify them. What signify a few lives lost in a century or two? The tree of liberty must be refreshed from time to time with the blood of patriots & tyrants. It is it's natural manure. Our Convention has been too much impressed by the insurrection of Massachusetts: and in the spur of the moment they are setting up a kite to keep the henyard in order. I hope in God this article will be rectified before the new constitution is accepted.— . . .

LETTER TO DAVID HUMPHREYS[1]

Paris, March 18, 1789

The operations which have taken place in America lately, fill me with pleasure. In the first place they realize the confidence I had that whenever our affairs go obviously wrong the good sense of the people will interpose and set them to rights. The example of changing a constitution by assembling the wise men of the State, instead of assembling armies, will be worth as much to the world as the former examples we had given them. The constitution too which was the result of our deliberations, is unquestionably the wisest ever yet presented to men, and some of the accommodations of interest which it has adopted are greatly pleasing to me who have before had occasions of seeing how difficult those interests were to accommodate. A general concurrence of opinion seems to authorize us to say it has some defects. I am one of those who think it a defect that the important rights, not placed in security by

[1] *The Writings of Thomas Jefferson*, ed. Ford, vol. V, pp. 89–91.

the frame of the constitution itself were not explicitly secured by a supplementary declaration. There are rights which it is useless to surrender to the government, and which governments have yet always been fond to invade. These are the rights of thinking, and publishing our thoughts by speaking or writing; the right of free commerce; the right of personal freedom. There are instruments for administering the government, so peculiarly trustworthy, that we should never leave the legislature at liberty to change them. The new constitution has secured these in the executive & legislative departments; but not in the judiciary. It should have established trials by the people themselves, that is to say by jury. There are instruments so dangerous to the rights of the nation, and which place them so totally at the mercy of their governors, that those governors, whether legislative or executive, should be restrained from keeping such instruments on foot, but in well-defined cases. Such an instrument is a standing army. We are now allowed to say such a declaration of rights, as a supplement to the constitution where that is silent, is wanting to secure us in these points. The general voice has legitimated this objection. It has not however authorized me to consider as a real defect what I thought and still think one, the perpetual reëligibility of the president. But three states out of 11. having declared against this, we must suppose we are wrong according to the fundamental law of every society, the *lex majoris partis*, to which we are bound to submit. And should the majority change their opinion, & become sensible that this trait in their constitution is wrong, I would wish it to remain uncorrected, as long as we can avail ourselves of the services of our great leader, whose talents and whose weight of character I consider as peculiarly necessary to get the government so under way as that it may afterwards be carried on by sub-ordinate characters. . . .

FEDERALIST ARGUMENTS

The longest and most significant of the writings in defence of the constitution is the *Federalist*, a book written in the form of letters to the New York newspapers and afterwards brought together, by Hamilton, Madison, and Jay. Its length would make impossible anything except very inadequate reproduction here and it has been published in a number of inexpensive and easily available editions. However, although the quality of some of the *Federalist* papers is superior to that of any other writings of the controversy, practically all of the arguments for ratification used by its authors were expressed by others during the same period. Wilson and Livingston were leading men in their respective states and were influential in securing ratification there. Smith and Ramsay were among the less well known speakers and writers who favored the stronger government promised by the proposed constitution.

JAMES WILSON

SUBSTANCE OF AN ADDRESS TO A MEETING OF THE CITIZENS OF PHILADELPHIA, OCTOBER 6, 1787 [1]

It will be proper, however, before I enter into the refutation of the charges that are alleged, to mark the leading discrimination between the state constitutions, and the constitution of the United States. When the people established the powers of legislation under their separate governments, they invested their representatives with every right and authority which they did not in explicit terms reserve: and therefore upon every question, respecting the jurisdiction of the house of assembly, if the frame of government is silent, the jurisdiction is efficient and complete. But in delegating fœderal powers, another criterion was necessarily introduced: and the congressional authority is to be collected, not from tacit implication, but from the positive grant, expressed in the instrument of union. Hence, it is evident, that in the former case, everything which is not reserved, is given: but in the latter, the reverse of the proposition prevails, and every thing which is not given, is reserved. This distinction being recognized, will furnish an answer to those who think the omission of a bill of rights, a defect in the proposed constitution: for it would have been superfluous and absurd, to have stipulated with a fœderal body of our own creation, that we should enjoy those privileges, of which we are not divested either by the intention or the act that

[1] P. L. Ford, *Pamphlets*, pp. 155–61.

has brought that body into existence. For instance, the liberty of the press, which has been a copious subject of declamation and opposition: what controul can proceed from the fœderal government, to shackle or destroy that sacred palladium of national freedom? If, indeed, a power similar to that which has been granted for the regulation of commerce, had been granted to regulate literary publications, it would have been as necessary to stipulate that the liberty of the press should be preserved inviolate, as that the impost should be general in its operation. With respect, likewise, to the particular district of ten miles, which is to be the seat of government, it will undoubtedly be proper to observe this salutary precaution, as there the legislative power will be vested in the president, senate, and house of representatives of the United States. But this could not be an object with the convention: for it must naturally depend upon a future compact; to which the citizens immediately interested, will, and ought to be parties: and there is no reason to suspect, that so popular a privilege will in that case be neglected. In truth, then, the proposed system possesses no influence whatever upon the press; and it would have been merely nugatory, to have introduced a formal declaration upon the subject; nay, that very declaration might have been construed to imply that some degree of power was given, since we undertook to define its extent. . . .

This constitution, it has been further urged, is of a pernicious tendency, because it tolerates a standing army in the time of peace. This has always been a popular topic of declamation: and yet I do not know a nation in the world, which has not found it necessary and useful to maintain the appearance of strength in a season of the most profound tranquility. Nor is it a novelty with us; for under the present articles of confederation, congress certainly possesses this reprobated power: and the exercise of it is proved at this moment by the cantonments along the banks of the Ohio. But what would be our national situation, were it otherwise? Every principle of policy must be subverted, and the government must declare war before they are prepared to carry it on. Whatever may be the provocation, however important the object in view, and however necessary dispatch and secrecy may be, still the declaration must precede the preparation, and the enemy will be informed of your intention, not only before you are equipped for an attack, but even before you are fortified for a defence. The

consequence is too obvious to require any further delineation; and no man, who regards the dignity and safety of his country, can deny the necessity of a military force, under the controul, and with the restrictions which the new constitution provides.

Perhaps there never was a charge made with less reason, than that which predicts the institution of a baneful aristocracy in the fœderal senate. This body branches into two characters, the one legislative, and the other executive. In its legislative character, it can effect no purpose without the co-operation of the house of representatives: and in its executive character, it can accomplish no object, without the concurrence of the president. Thus fettered, I do not know any act which the senate can of itself perform: and such dependence necessarily precludes every idea of influence and superiority. But I will confess, that in the organization of this body, a compromise between contending interests is discernible: and when we reflect how various are the laws, commerce, habits, population, and extent of the confederated states, this evidence of mutual concession and accommodation ought rather to command a generous applause, than to excite jealousy and reproach. For my part, my admiration can only be equalled by my astonishment, in beholding so perfect a system formed from such heterogenous materials.

The next accusation I shall consider, is that which represents the fœderal constitution as not only calculated, but designedly framed, to reduce the state governments to mere corporations, and eventually to annihilate them. Those who have employed the term corporation, upon this occasion, are not perhaps aware of its extent. In common parlance, indeed, it is generally applied to petty associations for the ease and conveniency of a few individuals; but in its enlarged sense, it will comprehend the government of Pennsylvania, the existing union of the states, and even this projected system is nothing more than a formal act of incorporation. But upon what pretence can it be alleged that it was designed to annihilate the state governments? For, I will undertake to prove that upon their existence depends the existence of the fœderal plan. For this purpose, permit me to call your attention to the manner in which the president, senate, and house of representatives, are proposed to be appointed. The president is to be chosen by electors, nominated in such manner as the legislature of each state may direct; so that if there is no legislature,

there can be no senate. The house of representatives is to be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite to electors of the most numerous branch of the state legislature—unless, therefore, there is a state legislature, that qualification cannot be ascertained, and the popular branch of the fœderal constitution must likewise be extinct. From this view, then, it is evidently absurd to suppose, that the annihilation of the separate governments will result from their union; or, that, having that intention, the authors of the new system would have bound their connection with such indissoluble ties. Let me here advert to an arrangement highly advantageous; for you will perceive, without prejudice to the powers of the legislature in the election of senators, the people at large will acquire an additional privilege in returning members to the house of representatives—whereas, by the present confederation, it is the legislature alone that appoints the delegates to congress.

The power of direct taxation has likewise been treated as an improper delegation to the fœderal government; but when we consider it as the duty of that body to provide for the national safety, to support the dignity of the union, and to discharge the debts contracted upon the collective faith of the states, for their common benefit, it must be acknowledged that those, upon whom such important obligations are imposed, ought, in justice and in policy, to possess every means requisite for a faithful performance of their trust. But why should we be alarmed with visionary evils? I will venture to predict, that the great revenue of the United States must, and always will, be raised by impost; for, being at once less obnoxious, and more productive, the interest of the government will be best promoted by the accommodation of the people. Still, however, the object of direct taxation should be within reach in all cases of emergency; and there is no more reason to apprehend oppression in the mode of collecting a revenue from this resource, than in the form of impost, which, by universal assent, is left to the authority of the fœderal government. In either case, the force of civil constitutions will be adequate to the purpose; and the dread of military violence, which has been assiduously disseminated, must eventually prove the mere effusion of a wild imagination, or a factious spirit. But the salutary consequences that must flow from thus enabling the government

to relieve and support the credit of the union, will afford another answer to the objections upon this ground. The state of Pennsylvania, particularly, which has encumbered itself with the assumption of a great proportion of the public debt, will derive considerable relief and advantage; for, as it was the imbecility of the present confederation, which gave rise to the funding law, that law must naturally expire, when a complete and energetic fœderal system shall be substituted—the state will then be discharged from an extraordinary burden, and the national creditor will find it to be to his interest to return to his original security.

After all, my fellow-citizens, it is neither extraordinary nor unexpected, that the constitution offered to your consideration, should meet with opposition. It is the nature of man to pursue his own interest, in preference to the public good; and I do not mean to make any personal reflection, when I add, that it is the interest of a very numerous, powerful, and respectable body, to counteract and destroy the excellent work produced by the late convention. All the officers of government, and all the appointments for the administration of justice and the collection of the public revenue, which are transferred from the individual to the aggregate sovereignty of the states, will necessarily turn the stream of influence and emolument into a new channel. Every person, therefore, who either enjoys, or expects to enjoy a place of profit under the present establishment, will object to the proposed innovation? not, in truth, because it is injurious to the liberties of his country, but because it affects his schemes of wealth and consequence. I will confess, indeed, that I am not a blind admirer of this plan of government, and that there are some parts of it, which, if my wish had prevailed, would certainly have been altered. But, when I reflect how widely men differ in their opinions, and that every man (and the observation applies likewise to every state) has an equal pretension to assert his own, I am satisfied that any thing nearer to perfection could not have been accomplished. If there are errors, it should be remembered, that the seeds of reformation are sown in the work itself, and the concurrence of two thirds of the congress may at any time introduce alterations and amendments. Regarding it, then, in every point of view, with a candid and disinterested mind, I am bold to assert, that it is the BEST FORM OF GOVERNMENT WHICH HAS EVER BEEN OFFERED TO THE WORLD.

SPEECH OF MR. CHANCELLOR LIVINGSTON IN THE NEW YORK CONVENTION [1]

1788

[274] Mr. Chancellor LIVINGSTON. If we examine the history of federal republics, whose legislative powers were exercised only in states, in their collective capacity, we shall find in their fundamental principles the seeds of domestic violence and consequent annihilation. This was the principal reason why I thought the old Confederation would be forever impracticable.

Much has been said, sir, about the number which ought to compose the House of Representatives; and the question has been debated with great address by the gentlemen on both sides of the house. It is agreed that the representative body should be so small as to prevent the disorder inseparable from the deliberations of a mob, and yet sufficiently numerous to represent the interests of the people, and to be a safe depository of power. There is, unfortunately, no standard by which we can determine this matter. Gentlemen who think that a hundred may be the medium, in which the advantages of regular deliberation and the safety of the people are united, will probably be disposed to support the plan as it stands; others, who imagine that no number less than three or four hundred can insure the preservation of liberty, will contend for an alteration. Indeed, these effects depend so much upon contingency, and upon circumstances totally unconnected with the idea of numbers, that we ought not to be surprised at the want of a standing criterion. On so vague a subject, it is very possible that the opinions of no two gentlemen in this Assembly, if they were governed by their own original reflections, would entirely coincide. I acknowledge myself one of those who suppose the number expressed in the Constitution to be about the proper medium; and yet future experience may induce me to think it too small or too large. When I consider the objects and powers of the general government, I am of opinion that one hundred men may at all times be collected of sufficient information and integrity to manage well the affairs of the Union. Some gentlemen suppose that, to understand and provide for the general interests of commerce and manufactures, our legislators ought to know how all

[1] *Elliot's Debates;* second edition, volume II.

commodities are produced, from the first principle of vegetation to the last polish of mechanical labor; that they ought to be minutely acquainted with all the process of all the arts. If this were true, it would be necessary that a great part of the British House of Commons should be woollen-drapers; yet we seldom find such characters in that celebrated assembly.

As to the idea of representing the feelings of the people, I do not entirely understand it, unless by their feelings are meant their interests. They appear to me to be the same thing. But if they have feelings which do not rise out of their interests, I think they ought not to be represented. What! shall the unjust, the selfish, the unsocial feelings, be represented? Shall the vices, the infirmities, the passions, of the people, be represented? Government, sir, would be a monster; laws made to encourage virtue and maintain peace would have a preposterous tendency to subvert the authority and outrage the principles on which they were founded; besides, the feelings of the people are so variable and inconsistent, that our rulers should be chosen every day: people have one sort of feeling to-day, another to-morrow, and the voice of the representative must be incessantly changing in correspondence with these feelings. This would be making him a political weathercock.

The honorable gentleman from Duchess, (Mr. Smith,) who has so copiously declaimed against all declamation, has pointed his artillery against the rich and the great. I am not interested in defending rich men: but what does he mean by telling us that the rich are vicious and intemperate? Will he presume to point out to us the class of men in which intemperance is not to be found? Is there less intemperance in feeding on beef than on turtle? or in drinking rum than wine? I think the gentleman does not reason from facts. If he will look round among the rich men of his acquaintance, I fancy he will find them as honest and virtuous as any class in the community. He says the rich are unfeeling; I believe they are less so than the poor; for it seems to me probable that those who are most occupied by their own cares and distresses have the least sympathy with the distresses of others. The sympathy of the poor is generally selfish, that of the rich a more disinterested emotion.

The gentleman further observes, that ambition is peculiarly the vice of the wealthy. But have not all classes of men their

objects of ambition? Will not a poor man contend for a constable's staff with as much assiduity and eagerness as a man of rank will aspire to the chief magistracy? The great offices in the state are beyond the view of the poor and ignorant man: he will therefore contemplate an humbler office as the highest alluring object of ambition; he will look with equal envy on a successful competitor, and will equally sacrifice to the attainment of his wishes the duty he owes to his friends or to the public. But, says the gentleman, the rich will be always brought forward; they will exclusively enjoy the suffrages of the people. For my own part, I believe that, if two men of equal abilities set out together in life, one rich, the other of small fortune, the latter will generally take the lead in your government. The rich are ever objects of envy; and this, more or less, operates as a bar to their advancement. What is the fact? Let us look around us: I might mention gentlemen in office who have not been advanced for their wealth; I might instance, in particular, the honorable gentleman who presides over this state, who was not promoted to the chief magistracy for his riches, but his virtue.

The gentleman, sensible of the weakness of this reasoning, is obliged to fortify it by having recourse to the phantom aristocracy. I have heard much of this. I always considered it as the bugbear of the party. We are told that, in every country, there is a natural aristocracy, and that this aristocracy consists of the rich and the great: nay, the gentleman goes further, and ranks in this class of men the wise, the learned, and those eminent for their talents or great virtues. Does a man possess the confidence of his fellow-citizens for having done them important services? He is an *aristocrat*. Has he great integrity? Such a man will be greatly trusted: he is an aristocrat. Indeed, to determine that one is an aristocrat, we need only be assured he is a man of merit. But I hope we have many such. I hope, sir, we are all aristocrats. So sensible am I of that gentleman's talents, integrity, and virtue, that we might at once hail him the first of the nobles, the very prince of the Senate. But whom, in the name of common sense, will we have to represent us? Not the rich, for they are sheer aristocrats. Not the learned, the wise, the virtuous, for they are all aristocrats. Whom then? Why, those who are not virtuous; those who are not wise; those who are not learned: these are the men to whom alone we can trust our liberties. He says further,

we ought not to choose these aristocrats, because the people will not have confidence in them; that is, the people will not have confidence in those who best deserve and most possess their confidence. He would have his government composed of other classes of men: where will we find them? Why, he must go out into the highways, and pick up the rogue and the robber; he must go to the hedges and ditches, and bring in the poor, the blind, and the lame. As the gentleman has thus settled the definition of aristocracy, I trust that no man will think it a term of reproach; for who among us would not be wise? Who would not be virtuous? Who would not be above want? How, again, would he have us to guard against aristocracy? Clearly by doubling the representation, and sending twelve aristocrats instead of six. The truth is, in these republican governments, we know no such ideal distinctions. We are all equally aristocrats. Offices, emoluments, honors, are open to all.

Much has been said by the gentleman about corruption: he calculates that twenty-four may give the voice of Congress; that is, they will compose a bare majority of a bare quorum of both houses. He supposes here the most singular, and I might add, the most improbable combination of events. First, there is to be a power in the government who has the means, and whose interest it is to be corrupt. Next, twenty-four men are to compose the legislature; and these twenty-four, selected by their fellow-citizens as the most virtuous, are all, in violation of their oath and their real interests, to be corrupted. Then he supposes the virtuous minority inattentive, regardless of their own honor, and the good of their country; making no alarm, no struggle; a whole people suffering the injury of a ruinous law, yet ignorant, inactive, and taking no measures to redress the grievance.

Let us take a view of the present Congress. The gentleman is satisfied with our present federal government, on the score of corruption. Here he has confidence. Though each state may delegate seven, they generally send no more than three; consequently thirty-nine men may transact any business under the old government; while the new legislature, which will be, in all probability, constantly full, will consist of ninety-one. But, say the gentlemen, our present Congress have not the same powers. I answer, They have the very same. Congress have the power of making war and peace, of levying money and raising men; they

may involve us in a war at their pleasure; they may negotiate loans to any extent, and make unlimited demands upon the states. Here the gentleman comes forward, and says that the states are to carry these powers into execution; and they have the power of non-compliance. But is not every state bound to comply? What power have they to control Congress in the exercise of those rights which they have pledged themselves to support? It is true that they have broken, in numerous instances, the compact by which they were obligated; and they may do it again; but will the gentleman draw an argument of security from the facility of violating their faith? Suppose there should be a majority of creditor states, under the present government; might they not combine, and compel us to observe the covenant by which we had bound ourselves?

We are told that this Constitution gives Congress the power over the purse and the sword. Sir, have not all good governments this power? Nay, does any one doubt that, under the old Confederation, Congress holds the purse and the sword? How many loans did they procure, which we are bound to pay! How many men did they raise, whom we are bound to maintain! How will gentlemen say, that that body, which is indeed extremely small, can be more safely trusted than a much larger body, possessed of the same authority? What is the ground of such entire confidence in the one—what the cause of so much jealousy of the other?

An honorable member from New York has viewed the subject of representation in a point of light which had escaped me, and which I think clear and conclusive. He says, that the state of Delaware must have one; and, as that state will not probably increase for a long time, it will be the interest of the larger states to determine the ratio by what Delaware contains. The gentlemen in opposition say, suppose Delaware contains fifty thousand, why not fix the ratio at sixty thousand? Clearly, because by this the other states will give up a sixth part of their interests. The members of Congress, also, from a more private motive, will be induced to augment the representation. The chance of their own reëlection will increase with the number of their colleagues.

It has been further observed that the sense of the people is for a larger representation, and that this ought to govern us—that the people generally are of opinion, that even our House of Assembly is too small. I very much doubt this fact. As far as my observation has extended, I have found a very different sentiment

prevail. It seems to be the predominant opinion of our state government; and I presume that the people have as much confidence in their Senate of twenty-four as in their Assembly of sixty-five. All these considerations have united to give my mind the most perfect conviction, that the number specified in the Constitution is fully adequate to the present wants of the country, and that this number will be increased to the satisfaction of the most timid and jealous.

SPEECH OF THE HONORABLE MR. SMITH IN THE MASSACHUSETTS CONVENTION [1]

1788

[102] Hon. Mr. SMITH. Mr. President, I am a plain man, and get my living by the plough. I am not used to speak in public, but I beg your leave to say a few words to my brother ploughjoggers in this house. I have lived in a part of the country where I have known the worth of good government by the want of it. There was a black cloud that rose in the east last winter, and spread over the west. (Here Mr. Widgery interrupted. Mr. President, I wish to know what the gentleman means by the east.) I mean, sir, the county of Bristol; the cloud rose there, and burst upon us, and produced a dreadful effect. It brought on a state of anarchy, and that led to tyranny. I say, it brought anarchy. People that used to live peaceably, and were before good neighbors, got distracted, and took up arms against government. (Here Mr. Kingsley called to order, and asked, what had the history of last winter to do with the Constitution. Several gentlemen, and among the rest the Hon. Mr. Adams, said the gentleman was in order—let him go on in his own way.) I am going, Mr. President, to show you, my brother farmers, what were the effects of anarchy, that you may see the reasons why I wish for good government. People I say took up arms; and then, if you went to speak to them, you had the musket of death presented to your breast. They would rob you of your property; threaten to burn your houses; oblige you to be on your guard night and day; alarms spread from town to town; families were broken up; the tender mother would cry, "O, my

[1] *Elliot's Debates;* second edition, volume II.

son is among them! What shall I do for my child!" Some were taken captive, children taken out of their schools, and carried away. Then we should hear of an action, and the poor prisoners were set in the front, to be killed by their own friends. How dreadful, how distressing was this! Our distress was so great that we should have been glad to snatch at any thing that looked like a government. Had any person, that was able to protect us, come and set up his standard, we should all have flocked to it, even if it had been a monarch; and that monarch might have proved a tyrant;—so that you see that anarchy leads to tyranny, and better have one tyrant than so many at once.

Now, Mr. President, when I saw this Constitution, I found that it was a cure for these disorders. It was just such a thing as we wanted. I got a copy of it, and read it over and over. I had been a member of the Convention to form our own state constitution, and had learnt something of the checks and balances of power, and I found them all here. I did not go to any lawyer, to ask his opinion; we have no lawyer in our town, and we do well enough without. I formed my own opinion, and was pleased with this Constitution. My honorable old daddy there (pointing to Mr. Singletary) won't think that I expect to be a Congress-man, and swallow up the liberties of the people. I never had any post, nor do I want one. But I don't think the worse of the Constitution because lawyers, and men of learning, and moneyed men, are fond of it. I don't suspect that they want to get into Congress and abuse their power. I am not of such a jealous make. They that are honest men themselves are not apt to suspect other people. I don't know why our constituents have not a good right to be as jealous of us as we seem to be of the Congress; and I think those gentlemen, who are so very suspicious that as soon as a man gets into power he turns rogue, had better look at home.

We are, by this Constitution, allowed to send ten members to Congress. Have we not more than that number fit to go? I dare say, if we pick out ten, we shall have another ten left, and I hope ten times ten; and will not these be a check upon those that go? Will they go to Congress, and abuse their power, and do mischief, when they know they must return and look the other ten in the face, and be called to account for their conduct? Some gentlemen think that our liberty and property are not safe in the hands of moneyed men, and men of learning? I am not of that mind.

Brother farmers, let us suppose a case, now: Suppose you had a farm of 50 acres, and your title was disputed, and there was a farm of 5000 acres joined to you, that belonged to a man of learning, and his title was involved in the same difficulty; would you not be glad to have him for your friend, rather than to stand alone in the dispute? Well, the case is the same. These lawyers, these moneyed men, these men of learning, are all embarked in the same cause with us, and we must all swim or sink together; and shall we throw the Constitution overboard because it does not please us alike? Suppose two or three of you had been at the pains to break up a piece of rough land, and sow it with wheat; would you let it lie waste because you could not agree what sort of a fence to make? Would it not be better to put up a fence that did not please every one's fancy, rather than not fence it at all, or keep disputing about it until the wild beasts came in and devoured it? Some gentlemen say, Don't be in a hurry; take time to consider, and don't take a leap in the dark. I say, Take things in time; gather fruit when it is ripe. There is a time to sow and a time to reap; we sowed our seed when we sent men to the federal Convention; now is the harvest, now is the time to reap the fruit of our labor; and if we won't do it now, I am afraid we never shall have another opportunity. . . .

DAVID RAMSAY

ADDRESS TO THE FREEMEN OF SOUTH CAROLINA [1]

Friends, Countrymen, and Fellow Citizens:

You have, at this time a new federal constitution proposed for your consideration. The great importance of the subject demands your most serious attention. To assist you in forming a right judgment on this matter, it will be proper to consider,

1st. It is the manifest interest of these states to be united. Internal wars among ourselves, would most probably be the consequence of disunion. Our local weakness particularly proves it to be for the advantage of South Carolina to strengthen the federal government; for we are inadequate to secure ourselves from more powerful neighbours.

2nd. If the thirteen states are to be united in reality, as well as

[1] P. L. Ford, *Pamphlets*, pp. 373–80.

in name, the obvious principle of the union will be, that the congress, or general government, should have power to regulate all general concerns. In a state of nature, each man is free, and may do what he pleases: but in society, every individual must sacrifice a part of his natural rights; the minority must yield to the majority, and the collective interest must controul particular interests. When thirteen persons constitute a family, each should forego everything that is injurious to the other twelve. When several families constitute a parish, or county, each may adopt what regulations it pleases with regard to its domestic affairs, but must be abridged of that liberty in other cases, where the good of the whole is concerned.

When several parishes, counties, or districts, form a state, the separate interests of each must yield to the collective interest of the whole. When several states combine in one government, the same principles must be observed. These relinquishments of natural rights, are not real sacrifices: each person, county, or state, gains more than it loses, for it only gives up a right of injuring others, and obtains in return aid and strength to secure itself in the peaceable enjoyment of all remaining rights. If then we are to be an united people, and the obvious ground of union must be, that all continental concerns should be managed by Congress—let us by those principles examine the new constitution. Look over the 8th section, which enumerates the powers of Congress, and point out one that is not essential on the before recited principles of union. The first is a power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States.

When you authorised Congress to borrow money, and to contract debts, for carrying on the late war, you could not intend to abridge them of the means of paying their engagements, made on your account. You may observe that their future power is confined to provide *common defence* and *general welfare* of the United States. If they apply money to any other purposes, they exceed their powers. The people of the United States who pay, are to be judges how far their money is properly applied. It would be tedious to go over all the powers of Congress, but it would be easy to show that they all may be referred to this single principle, "that the general concerns of the union ought to be managed by the general government."

The opposers of the constitution cannot show a single power delegated to Congress, that could be spared consistently with the welfare of the whole, nor a single one taken from the states, but such as can be more advantageously lodged in the general government, than in that of the separate states.

. . . Ask the man who objects to the powers of Congress two questions, *is* it not necessary that the supposed dangerous power should be lodged somewhere? And secondly, where can it be lodged, consistently with the general good, so well as in the general government? Decide for yourselves on these obvious principles of union.

It has been objected, that the eastern states have an advantage in their representation in Congress. Let us examine this objection—the four eastern states send seventeen members to the house of representatives, but Georgia, South-Carolina, North-Carolina and Virginia, send twenty-three. The six northern states send twenty-seven, the six southern thirty. In both cases, we have a superiority;—but, say the objectors, add Pennsylvania to the northern states, and there is a majority against us. It is obvious to reply, add Pennsylvania to the southern states, and they have a majority. The objection amounts to no more than that seven are more than six. It must be known to many of you, that the Southern states, from their vast extent of uncultivated country, are daily receiving new settlers; but in New England their country is so small, and their land so poor, that their inhabitants are constantly emigrating. As the rule of representation in Congress is to vary with the number of inhabitants, our influence in the general government will be constantly increasing. In fifty years, it is probable that the Southern states will have a great ascendency over the Eastern. It has been said that thirty-five men, not elected by yourselves, may make laws to bind you. This objection, if it has any force, tends to the destruction of your state government. By our constitution, sixty-nine make a quorum; of course, thirty-five members may make a law to bind all the people of South-Carolina.—Charleston, and any one of the neighboring parishes send collectively thirty-six members; it is therefore possible, in the absence of all others, that three of the lower parishes might legislate for the whole country. Would this be a valid objection against your own constitution? It certainly would not—neither is it against the proposed federal plan. Learn from it this

useful lesson—insist on the constant attendance of your members, both in the state assembly, and Continental Congress; your representation in the latter, is as numerous in a relative proportion with the other states as it ought to be. You have a thirteenth part in both houses; and you are not, on principles of equality, entitled to more. . . .

It has been said, we will have a navigation act, and be restricted to American bottoms, and that high freight will be the consequence. We certainly ought to have a navigation act, and we assuredly ought to give a preference, though not a monopoly, to our own shipping.

If this state is invaded by a maritime force, to whom can we apply for immediate aid?—To Virginia and North-Carolina? Before they can march by land to our assistance, the country may be overrun. The Eastern states, abounding in men and in ships, can sooner relieve us, than our next door neighbours. It is therefore not only our duty, but our interest to encourage their shipping. They have sufficient resources on a few months notice, to furnish tonnage enough to carry off all your exports; and they can afford, and doubtless will undertake to be your carriers on as easy terms as you now pay for freight in foreign bottoms. . . .

. . . It is farther objected, that they have stipulated for a right to prohibit the importation of negroes after 21 years. On this subject observe, as they are bound to protect us from domestic violence, they think we ought not to increase our exposure to that evil, by an unlimited importation of slaves. Though Congress may forbid the importation of negroes after 21 years, it does not follow that they will. On the other hand, it is probable that they will not. The more rice we make, the more business will be for their shipping; their interest will therefore coincide with our's. Besides, we have other sources of supply—the importation of the ensuing 20 years, added to the natural increase of those we already have, and the influx from our northern neighbours, who are desirous of getting rid of their slaves, will afford a sufficient number for cultivating all the lands in this state.

Let us suppose the union to be dissolved by the rejection of the new constitution, what would be our case? The united states owe several millions of dollars to France, Spain, and Holland. If an efficient government is not adopted, which will provide for the payment of our debt, especially of that which is due to for-

eigners—who will be the losers? Most certainly the southern states. Our exports, as being the most valuable, would be the first objects of capture on the high seas, or descents would be made on our defenceless coasts, till the creditors of the United States had paid themselves at the expense of this weaker part of the union. Let us also compare the present confederation with the proposed constitution. The former can neither protect us at home, nor gain us respect abroad; it cannot secure the payment of our debts, nor command the resources of our country, in case of danger. Without money, without a navy, or the means of even supporting an army of our own citizens in the field, we lie at the mercy of every invader; our sea-port towns may be laid under contribution, and our country ravaged.

By the new constitution, you will be protected with the force of the union, against domestic violence and foreign invasion. You will have a navy to defend your coast.—The respectable figure you will make among the nations, will so far command the attention of foreign powers, that it is probable you will soon obtain such commercial treaties, as will open to your vessels the West-India islands, and give life to your expiring commerce.

In a country like our's, abounding with free men all of one rank, where property is equally diffused, where estates are held in fee simple, the press free, and the means of information common, tyranny cannot reasonably find admission under any form of government; but its admission is next to impossible under one where the people are the source of all power, and elect either mediately by their representatives, or immediately by themselves the whole of their rulers.

Examine the new constitution with candor and liberality. Indulge no narrow prejudices to the disadvantage of your brethren of the other states; consider the people of all the thirteen states, as a band of brethren, speaking the same language, professing the same religion, inhabiting one undivided country, and designed by heaven to be one people. Content that what regards all the states should be managed by that body which represents all of them; be on your guard against the misrepresentations of men who are involved in debt; such may wish to see the constitution rejected, because of the following clause, "no state shall emit bills of credit, make any thing but gold and silver coin, a tender in payment of debts, pass any *ex post facto* law, or law impairing

the obligation of contracts." This will doubtless bear hard on debtors who wish to defraud their creditors, but it will be real service to the honest part of the community. Examine well the characters and circumstances of men who are averse to the new constitution. Perhaps you will find that the above recited clause is the real ground of the opposition of some of them, though they may artfully cover it with a splendid profession of zeal for state privileges and general liberty. . . .

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CHAPTER V

UNDER THE NEW CONSTITUTION

INTRODUCTION

One of the most recent of political phenomena is the political party. Since the beginning of government there have been opposition groups or factions, but the officially recognised political party, with its relatively permanent and highly developed organization, is an institution not to be found before the eighteenth century. And it was not really understood or accepted as a part of the political system of the state until well into the nineteenth century. The framers of the American Constitution had nothing except fear for the results of the spirit of faction and they made no provision in that instrument by which political parties could have any place in the government. Most of them seem to have believed that this evil spirit is inevitable because it comes from causes sown in the nature of man, but their only serious proposal for dealing with it was to provide some institutional device that would check its more serious effects. Madison contended that the very size of the new state would serve this function; others argued that the system of checks and balances would have such a result. It would seem that they were most nearly correct when they asserted the inevitability of factions. Within a few months of the new government's establishment there were signs of an alignment into antagonistic groups in Congress and even in the Cabinet. By the end of Washington's second administration there were organised parties throughout a large part of the nation.

Most of the controversy during the first few years of the new government centered about the financial and commercial program of Alexander Hamilton, first Secretary of the Treas-

ury. The funding of the national debt at par, the assumption of state debts incurred during the Revolution, the establishment of a national bank, the enacting of customs and excise taxes,—these and other measures in his brilliant program produced strong opposition. Jefferson, first Secretary of State, soon became the leader of the Republicans, as the new opposition came to be called. For the most part his followers were from those groups and sections that had opposed the ratification of the Constitution, although there were not a few of the old Federalists who became Republicans and a goodly number of new Federalists who had been Anti-Federalists during the struggles of 1787–89. But those who had been opposed to the stronger government promised by the Constitution, whether the cause had been economic interest, racial or religious feeling, political or economic ideals, were the ones most likely to be responsive to the arguments of the Republican leaders.

Most of the political literature of this period is of much greater importance to the historian of American political parties than to the student of political theory. But there is some material of genuine significance in the latter field. Several of Hamilton's great state papers are of exceptional quality and of lasting influence upon American political thought. Jefferson wrote a number of documents which were to furnish the real starting point for the narrow construction or state rights school. In the letters which Adams and Jefferson wrote after they had retired from active political life we find the final statement of the principles which they believed to be most fundamental in their political faith. And the voluminous writings of John Taylor present the most formidable attempt ever made by an American to present a reasoned argument for a consistent body of political doctrine.

JOHN ADAMS

In these private letters Adams summarizes most of his political philosophy. The letter to his cousin Samuel Adams was written while he was Vice President of the United States and is, in effect, a brief statement of the argument dealt with elaborately in his *Discourses on Davila*. The letters to John Taylor grew out of Taylor's attack on Adams's *Defence of the Constitutions*. The letter to Benjamin Rush came as a result of Rush's attempt to reconcile Jefferson and Adams, friends and fellow workers in the same cause for many years, estranged after the growth of strong party feeling during Washington's administration. That Rush's attempt was successful is indicated by the extensive and delightful correspondence between Adams and Jefferson beginning in 1813 and continuing almost to the time of their death.

LETTER TO SAMUEL ADAMS [1]

18 October, 1790

Dear Sir,—I am thankful to our common friend, as well as to you, for your favor of the fourth, which I received last night. My fears are in unison with yours, that hay, wood, and stubble, will be the materials of the new political buildings in Europe, till men shall be more enlightened and friendly to each other.

You agree, that there are undoubtedly principles of political architecture. But, instead of particularizing any of them, you seem to place all your hopes in the universal, or at least more general, prevalence of knowledge and benevolence. I think with you, that knowledge and benevolence ought to be promoted as much as possible; but, despairing of ever seeing them sufficiently general for the security of society, I am for seeking institutions which may supply in some degree the defect. If there were no ignorance, error, or vice, there would be neither principles nor systems of civil or political government.

I am not often satisfied with the opinions of Hume; but in this he seems well founded, that all projects of government, founded in the supposition or expectation of extraordinary degrees of virtue, are evidently chimerical. Nor do I believe it possible, humanly speaking, that men should ever be greatly improved in knowledge or benevolence, without assistance from the principles and system of government.

[1] *Works of John Adams*, vol. VI, pp. 414–20.

I am very willing to agree with you in fancying, that in the greatest improvements of society, government will be in the republican form. It is a fixed principle with me, that all good government is and must be republican. But, at the same time, your candor will agree with me, that there is not in lexicography a more fraudulent word. Whenever I use the word *republic* with approbation, I mean a government in which the people have collectively, or by representation, an essential share in the sovereignty. The republican forms of Poland and Venice are much worse, and those of Holland and Bern very little better, than the monarchical form in France before the late revolution. By the republican form, I know you do not mean the plan of Milton, Nedham, or Turgot. For, after a fair trial of its miseries, the simple monarchical form will ever be, as it has ever been, preferred to it by mankind. Are we not, my friend, in danger of rendering the word *republican* unpopular in this country by an indiscreet, indeterminate, and equivocal use of it? The people of England have been obliged to wean themselves from the use of it, by making it unpopular and unfashionable, because they found it was artfully used by some, and simply understood by others, to mean the government of their interregnum parliament. They found they could not wean themselves from that destructive form of government so entirely, as that a mischievous party would not still remain in favor of it, by any other means than by making the words *republic* and *republican* unpopular. They have succeeded to such a degree, that, with a vast majority of that nation, a republican is as unamiable as a witch, a blasphemer, a rebel, or a tyrant. If, in this country, the word *republic* should be generally understood, as it is by some, to mean a form of government inconsistent with a mixture of three powers, forming a mutual balance, we may depend upon it that such mischievous effects will be produced by the use of it as will compel the people of America to renounce, detest, and execrate it as the English do. With these explanations, restrictions, and limitations, I agree with you in your love of republican governments, but in no other sense.

With you, I have also the honor most perfectly to harmonize in your sentiments of the humanity and wisdom of promoting education in knowledge, virtue, and benevolence. But I think that these will confirm mankind in the opinion of the necessity of preserving and strengthening the dikes against the ocean, its tides

and storms. Human appetites, passions, prejudices, and self-love will never be conquered by benevolence and knowledge alone, introduced by human means. The millennium itself neither supposes nor implies it. All civil government is then to cease, and the Messiah is to reign. That happy and holy state is therefore wholly out of this question. You and I agree in the utility of universal education; but will nations agree in it as fully and extensively as we do, and be at the expense of it? We know, with as much certainty as attends any human knowledge, that they will not. We cannot, therefore, advise the people to depend for their safety, liberty, and security, upon hopes and blessings which we know will not fall to their lot. If we do our duty then to the people, we shall not deceive them, but advise them to depend upon what is in their power and will relieve them.

Philosophers, ancient and modern, do not appear to me to have studied nature, the whole of nature, and nothing but nature. Lycurgus's principle was war and family pride; Solon's was what the people would bear, &c. The best writings of antiquity upon government, those, I mean, of Aristotle, Zeno, and Cicero, are lost. We have human nature, society, and universal history to observe and study, and from these we may draw all the real principles which ought to be regarded. Disciples will follow their masters, and interested partisans their chieftains; let us like it or not, we cannot help it. But if the true principles can be discovered, and fairly, fully, and impartially laid before the people, the more light increases, the more the reason of them will be seen, and the more disciples they will have. Prejudice, passion, and private interest, which will always mingle in human inquiries, one would think might be enlisted on the side of truth, at least in the greatest number; for certainly the majority are interested in the truth, if they could see to the end of all its consequences. "Kings have been deposed by aspiring nobles." True, and never by any other. "These" (the nobles, I suppose,) "have waged everlasting war against the common rights of men." True, when they have been possessed of the *summa imperii* in one body, without a check. So have the plebeians; so have the people; so have kings; so has human nature, in every shape and combination, and so it ever will. But, on the other hand, the nobles have been essential parties in the preservation of liberty, whenever and wherever it has existed. In Europe, they alone have preserved it against kings and people,

wherever it has been preserved; or, at least, with very little assistance from the people. One hideous despotism, as horrid as that of Turkey, would have been the lot of every nation of Europe, if the nobles had not made stands. By nobles, I mean not peculiarly an hereditary nobility, or any particular modification, but the natural and actual aristocracy among mankind. The existence of this you will not deny. You and I have seen four noble families rise up in Boston,—the CRAFTS, GORES, DAWES, and AUSTINS. These are as really a nobility in our town, as the Howards, Somersets, Berties, &c., in England. Blind, undistinguishing reproaches against the aristocratical part of mankind, a division which nature has made, and we cannot abolish, are neither pious nor benevolent. They are as pernicious as they are false. They serve only to foment prejudice, jealousy, envy, animosity, and malevolence. They serve no ends but those of sophistry, fraud, and the spirit of party. It would not be true, but it would not be more egregiously false, to say that the people have waged everlasting war against the rights of men. . . .

Let us do justice to the people and to the nobles; for nobles there are, as I have before proved, in Boston as well as in Madrid. But to do justice to both, you must establish an arbitrator between them. This is another principle.

It is time that you and I should have some sweet communion together. I do not believe, that we, who have preserved for more than thirty years an uninterrupted friendship, and have so long thought and acted harmoniously together in the worst of times, are now so far asunder in sentiment as some people pretend; in full confidence of which, I have used this freedom, being ever your warm friend.

LETTERS TO JOHN TAYLOR [1]

April, 1814.

[455] Mr. Adams thanks Mr. Taylor for proposing in the third page to analyze and ascertain the ideas intended to be expressed by the word "aristocracy." This is one of those words which have been abused. It has been employed to signify any thing, every thing, and nothing. Mr. Taylor has read Mr. Locke's chapter

[1] *Works of John Adams*, vol. VI.

"on the abuse of words," which, though it contains nothing but what daily experience exhibits to all mankind, ought, nevertheless if he had never written any thing else, to secure him immortal gratitude and renown. Without the learning of Luzac, Vanderkemp, Jefferson, or Parsons, Mr. Adams recollects enough of Greek, to remember that "aristocracy" originally signified "the government of the best men."

But who are to be judges of the best men? Who is to make the selection of the best men from the second best? and the third? and the fourth? and so on *ad infinitum?* For good and bad are infinitely divisible, like matter. Ay! there's the rub! Despots, monarchs, aristocrats, and democrats have, in all ages hit, at times, upon the best men, in the best sense of the word. But, at other times, and much more frequently, they have all chosen the very worst men; the men who have the most devotedly and the most slavishly flattered their vanity, gratified their most extravagant passions, and promoted their selfish and private views. Without searching volumes, Mr. Taylor, I will tell you in a few words what I mean by an aristocrat, and, consequently, what I mean by aristocracy. By an aristocrat, I mean every man who can command or influence TWO VOTES; ONE BESIDES HIS OWN.

Take the first hundred men you meet in the streets of a city, or on a turnpike road in the country, and constitute them a democratical republic. In my next, you may have some conjectures of what will appear in your new democracy.

When your new democratical republic meets, you will find half a dozen men of independent fortunes; half a dozen, of more eloquence; half a dozen, with more learning; half a dozen, with eloquence, learning, and fortune.

Let me see. We have now four-and-twenty; to these we may add six more, who will have more art, cunning, and intrigue, than learning, eloquence, or fortune. These will infallibly soon unite with the twenty-four. Thus we make thirty. The remaining seventy are composed of farmers, shopkeepers, merchants, tradesmen, and laborers. Now, if each of these thirty can, by any means, influence one vote besides his own, the whole thirty can carry sixty votes,—a decided and uncontrolled majority of the hundred. These thirty I mean by aristocrats; and they will instantly con-

vert your democracy of ONE HUNDRED into an aristocracy of THIRTY. . . .

[471] You "are unable to discover in our form of government any resemblance of aristocracy."

As every branch of executive authority committed or intrusted exclusively to one, resembles and is properly called a monarchical power, and a government, in proportion as its powers, legislative or executive, are lodged in one, resembles monarchy, so whatever authority or power of making or executing laws is exclusively vested in a few is properly called aristocratical; and a government, in proportion as it is constituted with such powers, resembles aristocracy.

Now, sir, let me ask you, whether you can discover no "resemblance of aristocracy in our form of government?" Are not great, very great, important, and essential powers intrusted to a few, a very few? Thirty-four senators, composed of two senators from each state, are an integral part of the legislature, which is the representative sovereignty of seven or eight millions of the people in the United States. These thirty-four men possess an absolute negative on all the laws of the nation. Nor is this all. These few, these very few, thirty-four citizens only in seven or eight millions, have an absolute negative upon the executive authority in the appointment of all officers in the diplomacy, in the navy, the army, the customs, excises, and revenues. They have, moreover, an absolute negative on all treaties with foreign powers, even with the aboriginal Indians. They are also an absolute judicature in all impeachments, even of the judges. Such are the powers in legislation, in execution, and in judicature, which in our form of government are committed to thirty-four men.

If in all these mighty powers and "exclusive privileges" you can "discover no resemblance of aristocracy," when and where did any resemblance of aristocracy exist? The Trigintivirs of Athens and the Decemvirs of Rome, I acknowledge, "resembled aristocracy" still more. But the lords of parliament in England do not resemble it so much. Nor did the nobility in Prussia, Germany, Russia, France, or Spain, possess such powers. The Palatines in Poland indeed!

How are these thirty-four senators appointed? Are they appointed by the people? Is the constitution of them democratical? They are chosen by the legislatures of the several states. And who

are the legislatures of these separate states? Are they the people? No. They are a selection of the *best men* among the people, made by the people themselves. That is, they are the very *aristoi* of the Greeks. Yet there is something more. These legislatures are composed of two bodies, a senate and a house of representatives, each assembly differently constituted, the senate more nearly "resembling aristocracy" than the house. Senators of the United States are chosen, in some states, by a convention of both houses; in others, by separate, independent, but concurrent votes. The senates in the former have great influence, and often turn the vote; in the latter, they have an absolute negative in the choice.

Here are refinements upon refinements of "resemblances of aristocracy," a complication of checks and balances, evidently extended beyond any constitution of government that I can at present recollect. Whether an exact balance has been hit, or whether an exact balance will ever be hit, are different questions. But in this I am clear, that the nearer we approach to an exact balance, the nearer we shall approach to "moral liberty," if I understand the phrase. . . .

[477] You say, sir, that I have gravely counted up several victims "of popular rage, as proofs that democracy is more pernicious than monarchy or aristocracy." This is not my doctrine, Mr. Taylor. My opinion is, and always has been, that absolute power intoxicates alike despots, monarchs, aristocrats, and democrats, and jacobins, and *sans culottes*. I cannot say that democracy has been more pernicious, on the whole, than any of the others. Its atrocities have been more transient; those of the others have been more permanent. The history of all ages shows that the caprice, cruelties, and horrors of democracy have soon disgusted, alarmed, and terrified themselves. They soon cry, "this will not do; we have gone too far! We are all in the wrong! We are none of us safe! We must unite in some clever fellow, who can protect us all, —Caesar, Bonaparte, who you will! Though we distrust, hate, and abhor them all; yet we must submit to one or another of them, stand by him, cry him up to the skies, and swear that he is the greatest, best, and finest man that ever lived!"

It has been my fortune, good or bad, to live in Europe ten years, from 1778 to 1788, in a public character. This destiny, singular in America, forced upon my attention the course of events in France, Holland, Geneva, and Switzerland, among many other

nations; and this has irresistibly attracted my thoughts more than has been for my interest. The subject cannot have escaped you. What has been the conduct of the democratic parties in all those nations? How horribly bloody in some! Has it been steady, consistent, uniform, in any? Has it not leaped from democracy to aristocracy, to oligarchy, to military despotism, and back again to monarchy, as often, and as easily, as the birds fly to the lower, the middle, or the upper limbs of a tree, or leap from branch to branch, or hop from spray to spray?

Democracy, nevertheless, must not be disgraced; democracy must not be despised. Democracy must be respected; democracy must be honored; democracy must be cherished; democracy must be an essential, an integral part of the sovereignty, and have a control over the whole government, or moral liberty cannot exist, or any other liberty. I have been always grieved by the gross abuses of this respectable word. One party speak of it as the most amiable, venerable, indeed as the sole object of its adoration; the other, as the sole object of its scorn, abhorrence, and execration. Neither party, in my opinion, know what they say. Some of them care not what they say, provided they can accomplish their own selfish purposes. These ought not to be forgiven. . . .

LETTER TO BENJAMIN RUSH [1]

December 25, 1811

I perceive plainly enough, Rush, that you have been teasing Jefferson to write to me, as you did me some time ago to write to him. You gravely advise me "to receive the olive branch," as if there had been war; but there has never been any hostility on my part, nor that I know, on his. When there has been no war, there can be no room for negotiations of peace.

Mr. Jefferson speaks of my political opinions; but I know of no difference between him and myself relative to the Constitution, or to forms of government in general. In measures of administration, we have differed in opinion. I have never approved the repeal of the judicial law, the repeal of the taxes, the neglect of the navy; and I have always believed that his system of gunboats for a national defence was defective. To make it complete,

[1] *Works of John Adams*, vol. X, pp. 10–11.

he ought to have taken a hint from Moliere's "*Femmes précieuses*," or his learned ladies, and appointed three or four brigades of horse, with a Major-General, and three or four brigadiers, to serve on board his galleys of Malta. I have never approved his non-embargo, or any non-intercourse, or non-importation laws.

But I have raised no clamors nor made any opposition to any of these measures. The nation approved them; and what is my judgment against that of the nation? On the contrary, he disapproved of the alien law and sedition law, which I believe to have been constitutional and salutary, if not necessary.

He disapproved of the eight per cent. loan, and with good reason. For I hated it as much as any man, and the army, too, which occasioned it. He disapproved, perhaps, of the partial war with France, which I believed, as far as it proceeded, to be a holy war. He disapproved of taxes, and perhaps the whole scheme of my administration, &c., and so perhaps did the nation. But his administration and mine are passed away into the dark backwards, and are now of no more importance than the administration of the old Congress in 1774 and 1775.

We differed in opinion about the French revolution. He thought it wise and good, and that it would end in the establishment of a free republic. I saw through it, to the end of it, before it broke out, and was sure it could end only in a restoration of the Bourbons, or a military despotism, after deluging France and Europe in blood. In this opinion I differed from you as much as from Jefferson; but all this made me no more of an enemy to you than to him, nor to him than to you. I believe you both to mean well to mankind and your country. I might suspect you both to sacrifice a little to the infernal Gods, and perhaps unconsciously to suffer your judgments to be a little swayed by a love of popularity, and possibly by a little spice of ambition.

In point of republicanism, all the difference I ever knew or could discover between you and me, or between Jefferson and me consisted,

1. In the difference between speeches and messages. I was a monarchist because I thought a speech more manly, more respectful to Congress and the nation. Jefferson and Rush preferred messages.

2. I held levees once a week, that all my time might not be wasted by idle visits. Jefferson's whole eight years was a levee.

3. I dined a large company once or twice a week. Jefferson dined a dozen every day.

4. Jefferson and Rush were for Liberty and straight hair. I thought curled hair was as republican as straight.

In these, and a few other points of equal importance, all miserable frivolities, that Jefferson and Rush ought to blush that they ever laid any stress upon them, I might differ; but I never knew any points of more consequence, on which there was any variation between us. . . .

LETTERS TO THOMAS JEFFERSON [1]

July 9, 1813

[50] "The same political parties, which now agitate the United States, have existed through all time." Precisely; and this is precisely the complaint in the preface to the first volume of my Defence. While other sciences have advanced, that of government is at a stand; little better understood, little better practised now than three or four thousand years ago. What is the reason? I say, parties and factions will not suffer improvements to be made. As soon as one man hints at an improvement, his rival opposes it. No sooner has one party discovered or invented any amelioration of the condition of man, or the order of society than the opposite party belies it, misconstrues it, misrepresents it, ridicules it, insults it, and persecutes it. Records are destroyed. Histories are annihilated or interpolated or prohibited; sometimes by Popes, sometimes by Emperors, sometimes by aristocratical, and sometimes by democratical assemblies, and sometimes by mobs. . . .

July 13, 1813

. . . [52] The first time that you and I differed in opinion on any material question was after your arrival from Europe; and that point was the French revolution. You was well persuaded in your own mind that the nation would succeed in establishing a free republican government. I was well persuaded in mine, that a project of such a government, over five-and-twenty millions of people, when four-and-twenty millions and five

[1] *Works of John Adams*, vol. X.

hundred thousand of them could neither read nor write, was as unnatural, irrational, and impracticable as it would be over the elephants, lions, tigers, panthers, wolves, and bears, in the royal menagerie at Versailles. Napoleon has lately invented a word, which perfectly expressed my opinion at that time and ever since. He calls the project *ideology;* and John Randolph, though he was, fourteen years ago, as wild an enthusiast for equality and fraternity as any of them, appears to be now a regenerated proselyte to Napoleon's opinion and mine, that it was all madness.

. . . It is a fine observation of yours that whig and tory belong to natural history. Inequalities of mind and body are so established by God Almighty in his constitution of human nature, that no art or policy can ever plane them down to a level. I have never read reasoning more absurd, sophistry more gross, in proof of the Athanasian creed, or transubstantiation, than the subtle labors of Helvetius and Rousseau to demonstrate the natural equality of mankind. *Jus cuique,* the golden rule, do as you would be done by, is all the equality that can be supported or defended by reason or common sense.

It is very true, as you justly observe, I can say nothing new on this or any other subject of government. But when Lafayette harrangued you, and me, and John Quincy Adams, through a whole evening, in your hotel in the *Cul de Sac,* at Paris, and developed the plans now in operation to reform France, though I was silent as you was, I then thought I could say something new to him. In plain truth, I was astonished at the grossness of his ignorance of government and history, as I had been for years before, at that of Turgot, Rochefoucauld, Condorcet, and Franklin. This gross ideology of them all first suggested to me the thought and the inclination, which I afterwards executed in London, of writing something upon aristocracy. I was restrained for years by many fearful considerations. Who and what was I? Why, a man of no name or consideration in Europe. The manual exercise of writing was painful and distressing to me, almost like a blow on the elbow or the knee; my style was habitually negligent, unstudied, unpolished; I should make enemies of all the French patriots, the Dutch patriots, the English republicans, dissenters, reformers, call them what you will; and, what came nearer home to my bosom than all the rest, I knew I should give offence to many, if not all, of my best friends in Amer-

ica, and, very probably, destroy all the little popularity I ever had in a country where popularity had more omnipotence than the British parliament assumed. Where should I get the necessary books? What printer or bookseller would undertake to print such hazardous writings? But, when the French assembly of notables met, and I saw that Turgot's "government in one centre, and that centre the nation," a sentence as mysterious or as contradictory as the Athanasian creed, was about to take place; and when I saw that Shay's rebellion was breaking out in Massachusetts; and when I saw that even my obscure name was often quoted in France as an advocate for simple democracy; when I saw that the sympathies in America had caught the French flame, I was determined to wash my own hands as clear as I could of all this foulness. I had then strong forebodings that I was sacrificing all the emoluments of this life; and so it has happened, but not in so great a degree as I apprehended.

In truth, my "Defence of the Constitutions" and "Discourses on Davila," were the cause of that immense unpopularity which fell like the tower of Siloam upon me. Your steady defence of democratical principles, and your invariable favorable opinion of the French revolution, laid the foundation of your unbounded popularity. *Sic transit gloria mundi.*

Now, I will forfeit my life, if you can find one sentiment in my Defence of the Constitutions, or the Discourses on Davila, which, by a fair construction, can favor the introduction of hereditary monarchy or aristocracy into America. They were all written to support and strengthen the Constitution of the United States. . . .

November 13, 1815

[174] The fundamental article of my political creed is, that despotism, or unlimited sovereignty, or absolute power, is the same in a majority of a popular assembly, an aristocratical council, an oligarchical junto, and a single emperor. Equally arbitrary, cruel, bloody, and in every respect diabolical. . . .

ALEXANDER HAMILTON

FIRST REPORT ON THE PUBLIC CREDIT [1]

January, 1790

One of the main reasons for the supplanting of the Articles of Confederation by the Constitution was the financial insecurity of the government under the earlier system and the promise of a more secure order under the latter. In September, 1789, ten days after he took office as Secretary of the Treasury, Hamilton was requested by the House of Representatives to prepare and report a plan for the "adequate support of public credit." The report which Hamilton laid before the House at its next session is one of the most important American state papers and one of the essential sources of our knowledge of Hamilton's political theory.

To attempt to enumerate the complicated variety of mischiefs, in the whole system of the social economy, which proceed from a neglect of the maxims that uphold public credit, and justify the solicitude manifested by the House on this point, would be an improper intrusion on their time and patience.

In so strong a light, nevertheless, do they appear to the Secretary, that, on their due observance, at the present critical juncture, materially depends, in his judgment, the individual and aggregate prosperity of the citizens of the United States; their relief from the embarrassments they now experience; their character as a people; the cause of good government.

If the maintenance of public credit, then, be truly so important, the next inquiry which suggests itself is: By what means is it to be effected? The ready answer to which question is, by good faith; by a punctual performance of contracts. States, like individuals, who observe their engagements are respected and trusted, while the reverse is the fate of those who pursue an opposite conduct.

Every breach of the public engagements, whether from choice or necessity, is, in different degrees, hurtful to public credit. When such a necessity does truly exist, the evils of it are only to be palliated by a scrupulous attention, on the part of the Government, to carry the violation no further than the necessity absolutely requires, and to manifest, if the nature of the case admit of

[1] *The Works of Alexander Hamilton.* Edited by Henry Cabot Lodge. New York: G. P. Putnam's Sons. 1885. Vol. II, pp. 49–52.

it, a sincere disposition to make reparation whenever circumstances shall permit. But, with every possible mitigation, credit must suffer, and numerous mischiefs ensue. It is, therefore, highly important, when an appearance of necessity seems to press upon the public councils, that they should examine well its reality, and be perfectly assured that there is no method of escaping from it, before they yield to its suggestions. For, though it cannot safely be affirmed that occasions have never existed, or may not exist, in which violations of the public faith, in this respect, are inevitable; yet there is great reason to believe that they exist far less frequently than precedents indicate, and are oftenest either pretended, through levity or want of firmness; or supposed, through want of knowledge. Expedients often have been devised to effect, consistently with good faith, what has been done in contravention of it. Those who are most commonly creditors of a nation are, generally speaking, enlightened men; and there are signal examples to warrant a conclusion that, when a candid and fair appeal is made to them, they will understand their true interest too well to refuse their concurrence in such modifications of their claims as any real necessity may demand.

While the observance of that good faith, which is the basis of public credit, is recommended by the strongest inducements of political expediency, it is enforced by considerations of still greater authority. There are arguments for it which rest on the immutable principles of moral obligation. And in proportion as the mind is disposed to contemplate, in the order of Providence, an intimate connection between public virtue and public happiness, will be its repugnancy to a violation of those principles.

This reflection derives additional strength from the nature of the debt of the United States. It was the price of liberty. The faith of America has been repeatedly pledged for it, and with solemnities that give peculiar force to the obligation. There is, indeed, reason to regret that it has not hitherto been kept; that the necessities of the war, conspiring with inexperience in the subjects of finance, produced direct infractions; and that the subsequent period has been a continued scene of negative violation or non-compliance. But a diminution of this regret arises from the reflection, that the last seven years have exhibited an earnest and uniform effort, on the part of the Government of the Union, to retrieve the national credit, by doing justice to the creditors of the

nation; and that the embarrassments of a defective Constitution, which defeated this laudable effort, have ceased.

From this evidence of a favorable disposition given by the former Government, the institution of a new one, clothed with powers competent to calling forth the resources of the community, has excited correspondent expectations. A general belief accordingly prevails, that the credit of the United States will quickly be established on the firm foundation of an effectual provision for the existing debt. The influence which this has had at home is witnessed by the rapid increase that has taken place in the market value of the public securities. From January to November, they rose thirty-three and a third per cent.; and, from that period to this time, they have risen fifty per cent. more; and the intelligence from abroad announces effects proportionably favorable to our national credit and consequence.

It cannot but merit particular attention, that, among ourselves, the most enlightened friends of good government are those whose expectations are the highest.

To justify and preserve their confidence; to promote the increasing respectability of the American name; to answer the calls of justice; to restore landed property to its due value; to furnish new resources, both to agriculture and commerce; to cement more closely the union of the States; to add to their security against foreign attack; to establish public order on the basis of an upright and liberal policy;—these are the great and invaluable ends to be secured by a proper and adequate provision, at the present period, for the support of public credit.

To this provision we are invited, not only by the general considerations which have been noticed, but by others of a more particular nature. It will procure, to every class of the community, some important advantages, and remove some no less important disadvantages. . . .

OPINION ON THE CONSTITUTIONALITY OF THE BANK OF THE UNITED STATES [1]

1791

Jefferson had been brought to favor the first steps in the establishment of a stronger system of national finance, but he opposed the plan for a national bank, holding that it would be an unwarranted extension of the powers delegated to the central government by the Constitution. Washington asked for opinions on the point of constitutionality from the cabinet. Hamilton's elaborate defence of one of his favorite plans is the first great argument setting forth the theory of broad or loose construction of the Constitution. It should be compared with Marshall's opinion upholding the bank in *McCulloch* v. *Maryland.*

The Secretary of the Treasury having perused with attention the papers containing the opinions of the Secretary of State and Attorney General, concerning the constitutionality of the bill for establishing a National Bank, proceeds, according to the order of the President, to submit the reasons which have induced him to entertain a different opinion.

It will naturally have been anticipated, that in performing this task, he would feel uncommon solicitude. Personal considerations alone, arising from the reflection that the measure originated with him, would be sufficient to produce it. The sense which he has manifested of the great importance of such an institution to the successful administration of the department under his particular care, and an expectation of serious ill consequences to result from a failure of the measure, do not permit him to be without anxiety on public accounts. But the chief solicitude arises from a firm persuasion, that principles of construction like those espoused by the Secretary of State and Attorney General, would be fatal to the just and indispensable authority of the United States.

In entering upon the argument, it ought to be premised that the objections of the Secretary of State and Attorney General are founded on a general denial of the authority of the United States to erect corporations. The latter, indeed, expressly admits, that if there be anything in the bill which is not warranted by the Constitution, it is the clause of incorporation.

Now it appears to the Secretary of the Treasury that this *gen-*

[1] *The Works of Alexander Hamilton,* ed. Lodge, vol. III, pp. 180–92.

eral principle is *inherent* in the very *definition* of government, and *essential* to every step of progress to be made by that of the United States, namely: That every power vested in a government is in its nature *sovereign* and includes, by *force* of the *term*, a right to employ all the *means* requisite and fairly applicable to the attainment of the *ends* of such power, and which are not precluded by restrictions and exceptions specified in the Constitution, or not immoral, or not contrary to the *essential ends* of political society.

This principle, in its application to government in general, would be admitted as an axiom; and it will be incumbent upon those who may incline to deny it, to prove a distinction, and to show that a rule which, in the general system of things, is essential to the preservation of the social order, is inapplicable to the United States.

The circumstance that the powers of sovereignty are in this country divided between the National and State governments, does not afford the distinction required. It does not follow from this, that each of the portion of *powers* delegated to the one or to the other, is not sovereign with *regard to its proper objects*. It will only *follow* from it, that each has sovereign power as to *certain things*, and not as to *other things*. To deny that the government of the United States has sovereign power, as to its declared purposes and trusts, because its power does not extend to all cases, would be equally to deny that the State governments have sovereign power in any case, because their power does not extend to every case. The tenth section of the first article of the Constitution exhibits a long list of very important things which they may not do. And thus the United States would furnish the singular spectacle of a *political society* without *sovereignty*, or of a *people governed*, without *government*.

If it would be necessary to bring proof to a proposition so clear, as that which affirms that the powers of the federal government, as to *its objects*, were sovereign, there is a clause of its Constitution which would be decisive. It is that which declares that the Constitution, and the laws of the United States made in pursuance of it, and all treaties made, or which shall be made, under their authority, shall be the *supreme law of the land*. The power which can create the *supreme law of the land in any case*, is doubtless *sovereign* as to such case.

This general and indisputable principle puts at once an end to the *abstract* question, whether the United States have power to erect a *corporation;* that is to say, to give a *legal* or *artificial capacity* to one or more persons, distinct from the *natural.* For it is unquestionably incident to *sovereign power* to erect corporations, and consequently to *that* of the United States, in *relation* to the *objects* intrusted to the management of the government. The difference is this: where the authority of the government is general, it can create corporations in *all cases;* where it is confined to certain branches of legislation, it can create corporations *only* in those cases.

Here then, as far as concerns the reasonings of the Secretary of State and the Attorney General, the affirmative of the constitutionality of the bill might be permitted to rest. It will occur to the President, that the principle here advanced has been untouched by either of them.

For a more complete elucidation of the point, nevertheless, the arguments which they had used against the power of the government to erect corporations, however foreign they are to the great and fundamental rule which has been stated, shall be particularly examined. And after showing that they do not tend to impair its force, it shall also be shown that the power of incorporation, incident to the government in certain cases, does fairly extend to the particular case which is the object of the bill.

The first of these arguments is, that the foundation of the Constitution is laid on this ground: "That all powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved for the States, or to the people." Whence it is meant to be inferred, that Congress can in no case exercise any power not included in those not enumerated in the Constitution. And it is affirmed, that the power of erecting a corporation is not included in any of the enumerated powers.

The main proposition here laid down, in its true signification is not to be questioned. It is nothing more than a consequence of this republican maxim, that all government is a delegation of power. But how much is delegated in each case, is a question of fact, to be made out by fair reasoning and construction, upon the particular provisions of the Constitution, taking as guides the general principles and general ends of governments.

It is not denied that there are *implied* as well as *express powers,*

and that the *former* are as effectually delegated as the *latter*. And for the sake of accuracy it shall be mentioned, that there is another class of powers, which may be properly denominated *resulting powers*. It will not be doubted, that if the United States should make a conquest of any of the territories of its neighbors, they would possess sovereign jurisdiction over the conquered territory. This would be rather a result, from the whole mass of the powers of the government, and from the nature of political society, than a consequence of either of the powers specially enumerated.

But be this as it may, it furnishes a striking illustration of the general doctrine contended for; it shows an extensive case, in which a power of erecting corporations is either implied in, or would result from, some or all of the powers vested in the national government. The jurisdiction acquired over such conquered country would certainly be competent to any species of legislation.

To return:—It is conceded that *implied powers* are to be considered as delegated equally with *express ones*. Then it follows, that as a power of erecting a corporation may as well be *implied* as any other thing, it may as well be employed as an *instrument* or *mean* of carrying into execution any of the specified powers, as any other *instrument* or *mean* whatever. The only question must be, in this, as in every other case, whether the mean to be employed, or in this instance, the corporation to be erected, has a natural relation to any of the acknowledged objects or lawful ends of the government. Thus a corporation may not be erected by Congress for superintending the police of the city of Philadelphia, because they are not authorized to *regulate* the *police* of that city. But one may be elected in relation to the collection of taxes, or to the trade with foreign countries, or to the trade between the States, or with the Indian tribes; because it is the province of the Federal government to *regulate* those objects, and because it is incident to a general *sovereign* or *legislative* power to *regulate* a thing, to employ all the means which relate to its regulation to the best and greatest advantage.

A strange fallacy seems to have crept into the manner of thinking and reasoning upon the subject. Imagination appears to have been unusually busy concerning it. An incorporation seems to have been regarded as some *great independent substantive thing;* as a political end of peculiar magnitude and moment; whereas it is truly to be considered as a *quality*, *capacity*, or *mean* to an end.

Thus a mercantile company is formed, with a certain capital, for the purpose of carrying on a particular branch of business. Here the business to be prosecuted is the end. The association, in order to form the requisite capital, is the primary mean. Suppose that an incorporation were added to this, it would only be to add a new *quality* to that association, to give it an artificial capacity, by which it would be enabled to prosecute the business with more safety and convenience.

That the importance of the power of incorporation has been exaggerated, leading to erroneous conclusions, will further appear from tracing it to its origin. The Roman law is the source of it, according to which a *voluntary* association of individuals, at *any time*, or for any purpose, was capable of producing it. In England, whence our notions of it are immediately borrowed, it forms part of the executive authority, and the exercise of it has been often *delegated* by that authority. Whence, therefore, the ground of the supposition that it lies beyond the reach of all those very important portions of sovereign power, legislative as well as executive, which belongs to the government of the United States.

To this mode of reasoning respecting the right of employing all the means requisite to the execution of the specified powers of the government, it is objected, that none but necessary and proper means are to be employed; and the Secretary of State maintains, that no means are to be considered as *necessary* but those without which the grant of the power would be *nugatory*. Nay, so far does he go in his restrictive interpretation of the *word*, as even to make the case of *necessity* which shall warrant the constitutional exercise of the power to depend on *casual* and *temporary* circumstances; an idea which alone refutes the construction. The *expediency* of exercising a particular power, at a particular time, must, indeed, depend on circumstances; but the constitutional right of exercising it must be uniform and invariable, the same to-day as to-morrow.

All the arguments, therefore, against the constitutionality of the bill derived from the accidental existence of certain State banks,—institutions which happen to exist to-day, and, for aught that concerns the government of the United States, may disappear to-morrow,—must not only be rejected as fallacious, but must be viewed as demonstrative that there is a *radical* source of error in the reasoning.

It is essential to the being of the national government, that so erroneous a conception of the meaning of the word *necessary* should be exploded.

It is certain that neither the grammatical nor popular sense of the term requires that construction. According to both, *necessary* often means no more than *needful, requisite, incidental, useful,* or *conducive to.* It is a common mode of expression to say, that it is *necessary* for a government or a person to do this or that thing, when nothing more is intended or understood than that the interests of the government or person require, or will be promoted by, the doing of this or that thing. The imagination can be at no loss for exemplifications of the use of the word in this sense. And it is the true one in which it is to be understood as used in the Constitution. The whole turn of the clause containing it indicates, that it was the intent of the Convention, by that clause, to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness. They are, "to make all *laws* necessary and proper for *carrying into execution* the *foregoing powers,* and *all other powers* vested by the Constitution in the *government* of the United States, or in any *department* or *officer* thereof."

To understand the word as the Secretary of State does, would be to depart from its obvious and popular sense, and to give it a restrictive operation, an idea never before entertained. It would be to give it the same force as if the word *absolutely* or *indispensably* had been prefixed to it.

Such a construction would beget endless uncertainty and embarrassment. The cases must be palpable and extreme, in which it could be pronounced, with certainty, that a measure was absolutely necessary, or one, without which, the exercise of a given power would be nugatory. There are few measures of any government which would stand so severe a test. To insist upon it, would be to make the criterion of the exercise of any implied power, a *case of extreme necessity;* which is rather a rule to justify the overleaping of the bounds of constitutional authority, than to govern the ordinary exercise of it.

It may be truly said of every government, as well as of that of the United States, that it has only a right to pass such laws as are necessary and proper to accomplish the objects intrusted to it. For no government has a right to do *merely what it pleases.* Hence,

by a process of reasoning similar to that of the Secretary of State, it might be proved that neither of the State governments has a right to incorporate a bank. It might be shown that all the public business of the state could be performed without a bank, and inferring thence that it was unnecessary, it might be argued that it could not be done, because it is against the rule which has been just mentioned. A like mode of reasoning would prove that there was no power to incorporate the inhabitants of a town, with a view to a more perfect police. For it is certain that an incorporation may be dispensed with, though it is better to have one. It is to be remembered that there is no *express* power in any State constitution to erect corporations.

The *degree* in which a measure is necessary, can never be a *test* of the legal right to adopt it; that must be a matter of opinion, and can only be a *test* of expediency. The *relation* between the *measure* and the *end;* between the *nature* of the *mean* employed toward the execution of a power, and the object of that power, must be the criterion of constitutionality, not the more or less of *necessity* or *utility*.

The practice of the government is against the rule of construction advocated by the Secretary of State. Of this, the Act concerning lighthouses, beacons, buoys, and public piers, is a decisive example. This, doubtless, must be referred to the powers of regulating trade, and is fairly relative to it. But it cannot be affirmed that the exercise of that power in this instance was strictly *necessity*, or that the power itself would be *nugatory*, with out that of regulating establishments of this nature.

This restrictive interpretation of the word *necessary* is also contrary to this sound maxim of construction; namely, that the powers contained in a constitution of government, especially those which concern the general administration of the affairs of a country, its finances, trade, defense, etc., ought to be construed liberally in advancement of the public good. This rule does not depend on the particular form of a government, or on the particular demarcation of the boundaries of its powers, but on the nature and object of government itself. The means by which national exigencies are to be provided for, national inconveniences obviated, national prosperity promoted, are of such infinite variety, extent, and complexity, that there must of necessity be great latitude of discretion in the selection and application of those means. Hence,

consequently, the necessity and propriety of exercising the authorities intrusted to a government on principles of liberal construction.

The Attorney General admits the *rule*, but takes a distinction between a State and the Federal Constitution. The latter, he thinks, ought to be construed with greater strictness, because there is more danger of error in defining *partial* than *general* powers. But the reason of the rule forbids such a distinction. This reason is, the variety and extent of public exigencies, a far greater proportion of which, and of a far more critical kind, are objects of *National* than of *State* administration. The greater danger of error, as far as it is supposable, may be a prudential reason for caution in practice, but it cannot be a rule of restrictive interpretation.

In regard to the clause of the Constitution immediately under consideration, it is admitted by the Attorney General, that no *restrictive* effect can be ascribed to it. He defines the word *necessary* thus: "To be *necessary* is to be *incidental*, and may be denominated the natural means of executing a power."

But while on the one hand the construction of the Secretary of State is deemed inadmissible, it will not be contended, on the other, that the clause in question gives any *new* or *independent* power. But it gives an explicit sanction to the doctrine of *implied powers*, and is equivalent to an admission of the proposition that the government, as to its *specified powers* and *objects*, has plenary and sovereign authority, in some cases paramount to the States; in others, co-ordinate with it. For such is the plain import of the declaration, that it may pass all *laws* necessary and proper to carry into execution those powers.

It is no valid objection to the doctrine to say, that it is calculated to extend the power of the government throughout the entire sphere of State legislation. The same thing has been said, and may be said, with regard to every exercise of power by *implication* or *construction*.

The moment the literal meaning is departed from, there is a chance of error and abuse. And yet an adherence to the letter of its powers would at once arrest the motions of government. It is not only agreed, on all hands, that the exercise of constructive powers is indispensable, but every act which has been passed, is more or less an exemplification of it. One has been already mentioned—that relating to lighthouses, etc.—that which declares

the power of the President to remove officers at pleasure, acknowledges the same truth in another and a signal instance.

The truth is, that difficulties on this point are inherent in the nature of the Federal Constitution; they result inevitably from a division of the legislative power. The consequence of this division is, that there will be cases clearly within the power of the national government; others, clearly without its powers; and a third class, which will leave room for controversy and difference of opinion, and concerning which a reasonable latitude of judgment must be allowed.

But the doctrine which is contended for is not chargeable with the consequences imputed to it. It does not affirm that the national government is sovereign in all respects, but that it is sovereign to a certain extent; that is, to the extent of the objects of its specified powers.

It leaves, therefore, a criterion of what is constitutional, and of what is not so. This criterion is the *end*, to which the measure relates as a *mean*. If the *end* be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that *end*, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority. There is also this further criterion, which may materially assist the decision: Does the proposed measure abridge a pre-existing right of any State or of any individual? If it does not, there is a strong presumption in favor of its constitutionality, and slighter relations to any declared object of the Constitution may be permitted to turn the scale. . . .

LETTER TO COLONEL EDWARD CARRINGTON [1]

In this long letter to one of his close friends Hamilton defended his general political doctrine. At that time his program of legislation was under attack as being one leading to the destruction of the state governments and the substitution of monarchical for republican institutions.

May 26, 1792

My dear Sir:

By believing that I possess a share of your personal friendship and confidence, and yielding to that which I feel towards you;

[1] *The Works of Alexander Hamilton*, vol. VIII, pp. 248, 263–65

persuaded also, that our political creed is the same on two essential points—first, the necessity of Union to the respectability and happiness of this country, and second, the necessity of an efficient general government to maintain that Union, I have concluded to unbosom myself to you, on the present state of political parties and views. . . .

A word on another point. I am told that serious apprehensions are disseminated in your State as to the existence of a monarchical party meditating the destruction of State and a republican government. If it is possible that so absurd an idea can gain ground, it is necessary that it should be combated. I assure you, on my private faith and honor as a man, that there is not, in my judgment, a shadow of foundation for it. A very small number of men indeed may entertain theories less republican than Mr. Jefferson and Mr. Madison, but I am persuaded there is not a man among them who would not regard as both criminal and visionary any attempt to subvert the republican system of the country. Most of these men rather fear that it may not justify itself by its fruits, than feel a predilection for a different form; and their fears are not diminished by the factious and fanatical politics which they find prevailing among a certain set of gentlemen and threatening to disturb the tranquillity and order of the government.

As to the destruction of State governments, the great and real anxiety is to be able to preserve the national from the too potent and counteracting influence of those governments. As to my own political creed, I give it to you with the utmost sincerity. I am affectionately attached to the republican theory. I desire above all things to see the equality of political rights, exclusive of all hereditary distinction, firmly established by a practical demonstration of its being consistent with the order and happiness of society. As to State governments, the prevailing bias of my judgment is that if they can be circumscribed within bounds, consistent with the preservation of the national government, they will prove useful and salutary. If the States were all of the size of Connecticut, Maryland, or New Jersey, I should decidedly regard the local governments as both safe and useful. As the thing now is, however, I acknowledge the most serious apprehensions, that the government of the United States will not be able to maintain itself against their influence. I see that influence already penetrating into the national councils and preventing their di-

rection. Hence, a disposition on my part towards a liberal construction of the powers of the national government, and to erect every fence, to guard it from depredations, which is, in my opinion, consistent with constitutional propriety. As to any combination to prostrate the State governments, I disavow and deny it. From an apprehension lest the judiciary should not work efficiently and harmoniously, I have been desirous of seeing some national scheme of connection adopted as an amendment to the Constitution, otherwise I am for maintaining things as they are; though I doubt much the possibility of it, from a tendency in the nature of things towards the preponderancy of the State governments.

I said that I was affectionately attached to the republican theory. This is the real language of my heart, which I open to you in the sincerity of friendship, and I add that I have strong hopes of the success of that theory; but, in candor, I ought also to add that I am far from being without doubts. I consider its success as yet a problem. It is yet to be determined by experience whether it be consistent with that stability and order in government which are essential to public strength and private security and happiness.

On the whole, the only enemy which Republicanism has to fear in this country is in the spirit of faction and anarchy. If this will not permit the ends of government to be attained under it, if it engenders disorders in the community, all regular and orderly minds will wish for a change, and the demagogues who have produced the disorder will make it for their own aggrandizement. This is the old story. If I were disposed to promote monarchy and overthrow State governments, I would mount the hobby-horse of popularity; I would cry out "usurpation," "danger to liberty," etc., etc.; I would endeavor to prostrate the national government, raise a ferment, and then "ride in the whirlwind, and direct the storm." That there are men acting with Jefferson and Madison who have this in view, I verily believe; I could lay my finger on some of them. That Madison does not mean it, I also verily believe; and I rather believe the same of Jefferson, but I read him upon the whole thus: "A man of profound ambition and violent passions." . . .

ON THE WHISKEY REBELLION [1]

August 28, 1794

The excise law of 1791, one of Hamilton's financial measures, produced strong opposition in several sections, particularly in western Pennsylvania. Acts of violence in that district finally led to the calling out of the militia of four states. A show of force quickly put an end to all open resistance to the law. In order to prepare the public mind for the forcible suppression of the "rebellion" Hamilton wrote, over the pen-name "Tully," a series of letters defending the policy of the government and attacking what he believed to be anarchical tendencies.

If it were to be asked, What is the most sacred duty, and the greatest source of security in a republic? the answer would be, An inviolable respect for the Constitution and laws—the first growing out of the last. It is by this, in a great degree, that the rich and the powerful are to be restrained from enterprises against the common liberty—operated upon by the influence of a general sentiment, by their interest in the principle, and by the obstacles which the habit it produces erects against innovation and encroachment. It is by this, in a still greater degree, that caballers, intriguers, and demagogues are prevented from climbing on the shoulders of faction to the tempting seats of usurpation and tyranny.

Were it not that it might require too long a discussion, it would not be difficult to demonstrate that a large and well-organized republic can scarcely lose its liberty from any other cause than that of anarchy, to which a contempt of the laws is the high-road.

But without entering into so wide a field, it is sufficient to present to your view a more simple and a more obvious truth, which is this: that a sacred respect for the constitutional law is the vital principle, the sustaining energy, of a free government.

Government is frequently and aptly classed under two decriptions—a government of FORCE, and a government of LAWS; the first is the definition of despotism—the last, of liberty. But how can a government of laws exist when the laws are disrespected and disobeyed? Government supposes control. It is that POWER by which individuals in society are kept from doing injury to each other, and are brought to cooperate to a common

[1] *The Works of Alexander Hamilton*, vol. VI, pp. 26–32.

end. The instruments by which it must act are either the AUTHORITY of the laws or FORCE. If the first be destroyed, the last must be substituted; and where this becomes the ordinary instrument of government, there is an end to liberty!

Those, therefore, who preach doctrines, or set examples which undermine or subvert the authority of the laws, lead us from freedom to slavery; they incapacitate us for a GOVERNMENT of LAWS, and consequently prepare the way for one of FORCE, for mankind must have GOVERNMENT OF ONE SORT OR ANOTHER. There are, indeed, great and urgent cases where the bounds of the Constitution are manifestly transgressed, or its constitutional authorities so exercised as to produce unequivocal oppression on the community, and to render resistance justifiable. But such cases can give no color to the resistance by a comparatively inconsiderable part of a community, of constitutional laws distinguished by no extraordinary features of rigor or oppression, and acquiesced in by the body of the community.

Such a resistance is treason against society, against liberty, against every thing that ought to be dear to a free, enlightened, and prudent people. To tolerate it, were to abandon your most precious interests. Not to subdue it, were to tolerate it. Those who openly or covertly dissuade you from exertions adequate to the occasion, are your worst enemies. They treat you either as fools or cowards, too weak to perceive your interest or your duty, or too dastardly to pursue them. They therefore merit and will, no doubt, meet your contempt. To the plausible but hollow harangue of such conspirators you cannot fail to reply, How long, yet Catilines, will ye abuse our patience?

To urge the execution of that system would manifest, it is said, an intemperate spirit; and to excite your disapprobation of that course, you are threatened with the danger of a civil war, which is called the consummation of human evil.

To crown the outrage upon your understandings, the insurgents are represented as men who understand the principles of freedom, and know the horrors and distresses of anarchy, and who, therefore, must have been tempted to hostility against the laws by a RADICAL DEFECT, EITHER in the government *or* in those intrusted with its administration. How *thin* the partition which divides the insinuation from the assertion, that the government is in fault, and the insurgents in the right!

Fellow-citizens: A name, a sound, has too often had influence on the affairs of nations; an EXCISE has too long been the successful watchword of party. It has even sometimes led astray well-meaning men. The experiment is now to be tried whether there be any spell in it of sufficient force to unnerve the arm which may be found necessary to be raised in defence of law and order.

The jugglers who endeavor to cheat us with the sound, have never dared to venture into the fair fields of argument. They are conscious that it is easier to declaim than to reason on the subject. They know it to be better to play a game with the passions and prejudices, than to engage seriously with the understanding of the auditory. You have already seen that the merits of excise laws are immaterial to the question to be decided, that you have prejudged the point by a solemn constitutional act, and that until you shall have revoked or modified that act, resistance to its operation is a criminal infraction of the social compact, an inversion of the fundamental principles of republican government, and a daring attack upon YOUR sovereignty, which you are bound, by every motive of duty and self-preservation, to withstand and defeat. The matter might safely be suffered to rest here; but I shall take a future opportunity to examine the reasonableness of the prejudice which is inculcated against excise laws, and which has become the pretext for excesses tending to dissolve the bands of society.

Fellow-citizens: You are told that it will be intemperate to urge the execution of the laws which are resisted. What? Will it be indeed intemperate in your Chief Magistrate, sworn to maintain the Constitution, charged faithfully to execute the laws, and authorized to employ for that purpose force, when the ordinary means fail—will it be intemperate in him to exert that force, when the Constitution and the laws are opposed by force? Can he answer it to his conscience, to you, not to exert it?

Yes, it is said; because the execution of it will produce civil war—the consummation of human evil.

Fellow-citizens: Civil war is, undoubtedly, a great evil. It is one that every good man would wish to avoid, and will deplore if inevitable. But it is incomparably a less evil than the destruction of government. The first brings with it serious but temporary and partial ills; the last undermines the foundations of our security and happiness. And where should we be if it were once to

grow into a maxim, that force is not to be used against the seditious combinations of parts of the community to resist the laws? This would be to give a CARTE BLANCHE to ambition, to licentiousness, to foreign intrigue, to make you the prey of the gold of other nations—the sport of the passions and vices of individuals among yourselves. The hydra Anarchy would rear its head in every quarter. The goodly fabric you have established would be rent asunder, and precipitated into the dust. You knew how to encounter civil war rather than surrender your liberty to foreign domination; you will not hesitate now to brave it rather than to surrender your sovereignty to the tyranny of a faction; you will be as deaf to the apostles of anarchy now as you were to the emissaries of despotism then. Your love of liberty will guide you now as it did then; you know that the POWER of the majority and LIBERTY are inseparable. Destroy that, and this perishes. But, in truth, that which properly can be called civil war is not to be apprehended—unless from the act of those who endeavor to fan the flame, by rendering the government odious. A civil war is a contest between two GREAT parts of the same empire. The exertion of the strength of the nation to suppress resistance to its laws, by a sixtieth part of itself, is not of that description.

After endeavoring to alarm you with the horrors of civil war, an attempt is made to excite your sympathy in favor of the armed faction, by telling you that those who compose it are men who understand the principles of freedom, and know the horrors and distresses of anarchy, and must therefore have been prompted to hostility against the laws by a radical defect EITHER in the government OR in its administration. Fellow-citizens, for an answer to this you have only to consult your senses. The natural consequences of radical defect in a government, or in its administration, are national distress and suffering. Look around you—where is it? Do you feel it? Do you see it?

Go in quest of it beyond the Alleghany, and instead of it you will find that there also a scene of unparalleled prosperity upbraids the ingratitude and madness of those who are endeavoring to cloud the bright face of our political horizon, and to mar the happiest lot that beneficent Heaven ever indulged to undeserving mortals.

When you have turned your eyes towards that scene, examine well the men whose knowledge of the principles of freedom is so

emphatically vaunted—where did they get their better knowledge of those principles than that which you possess? How is it that you have been so blind or tame as to remain quiet, while they have been goaded into hostility against the laws by a RADICAL DEFECT in the government or its administration? Are you willing to yield them the palm of discernment, or patriotism, or of courage?

TULLY

DEFENCE OF THE INDEPENDENCE OF THE JUDICIARY [1]

March 2, 1802

Hamilton retired from the cabinet in 1795 and resumed his law practice in New York, but he did not cease to be deeply interested in the conduct of the national government. This is from one of a series of letters in which he vigorously opposed the program set forth in Jefferson's message to Congress in December, 1801.

. . . Concede to the Legislature a legal discretion to abolish the judges, where is the defence? where the security for the judicial department? There is absolutely none. This most valuable member of the government, when rightly constituted the surest guardian of person and property, of which stability is a prime characteristic, losing at once its most essential attributes, and doomed to fluctuate with the variable tide of faction, degenerates into a disgusting mirror of all the various malignant and turbulent humors of party spirit.

Let us not be deceived. The real danger is on the side of that foul and fatal doctrine, which emboldens its votaries, with daring front and unhallowed step, to enter the holy temple of justice and pluck from their seats the venerable personages, who, under the solemn sanction of the Constitution, are commissioned to officiate there—to guard that sacred compact with jealous vigilance—to dispense the laws with a steady and impartial hand,—unmoved by the storms of faction, unawed by its powers, unseduced by its favors—shielding right and innocence from every attack—resisting and repressing violence from every quarter. 'Tis from the triumph of that execrable doctrine that we may have to date the downfall of our government, and, with it, of the whole

[1] *The Works of Alexander Hamilton*, vol. VII, pp. 283–88.

fabric of republican liberty. Who will have the folly to deny that the definition of despotism is the concentration of all the powers of government in one person or in one body? Who is so blind as not to see that the right of the Legislature to abolish the judges at pleasure, destroys the independence of the judicial department, and swallows it up in the impetuous vortex of legislative influence? Who is so weak as to hope that the Executive, deprived of so powerful an auxiliary, will long survive? What dispassionate man can withstand the conviction that the boundaries between the departments will be thenceforth nominal, and that there will be no longer more than one active and efficient department?

It is a fundamental maxim of free government, that the three great departments of power, *legislative*, *executive*, and *judiciary*, shall be essentially distinct and independent, the one of the other. This principle, very influential in most of our State constitutions, has been particularly attended to in the Constitution of the United States; which, in order to give effect to it, has adopted a precaution peculiar to itself, in the provisions that forbid the legislature to vary in any way the compensation of the *President*, or to diminish that of a *judge*.

It is a principle equally sound, that though in a government like that of Great Britain, having an hereditary chief with vast prerogatives, the danger to liberty, by the predominance of one department over the other, is on the side of the executive; yet in popular forms of government, this danger is chiefly to be apprehended from the legislative branch.

The power of legislation is, in its own nature, the most comprehensive and potent of the three great sub-divisions of sovereignty. It is the will of the government; it prescribes universally the rule of action, and the sanctions which are to enforce it. It creates and regulates the public force, and it commands the public purse. If deposited in an elective representative of the people, it has, in most cases, the body of the nation for its auxiliary, and generally acts with all the momentum of popular favor. In every such government it is consequently an organ of immense strength. But when there is an hereditary chief magistrate, clothed with dazzling prerogatives and a great patronage, there is a powerful counterpoise, which, in most cases, is sufficient to preserve the equilibrium of the government; in some cases, to incline the scale too much to its own side.

In governments wholly popular or representative, there is no adequate counterpoise. Confidence in the most numerous, or legislative department, and jealousy of the executive chief, form the genius of every such government. That jealousy, operating in the constitution of the executive, causes this organ to be intrinsically feeble; and withholding in the course of administration accessory means of force and influence, is for the most part vigilant to continue it in a state of impotence. The result is that the legislative body, in this species of government, possesses additional resources of power and weight; while the executive is rendered much too weak for competition; almost too weak for self-defence.

A third principle, not less well founded than the other two, is that the judiciary department is naturally the weakest of the three. The sources of strength to the legislative branches have been briefly delineated. The executive, by means of its several active powers, of the dispensation of honors and emoluments, and of the direction of the public force, is evidently the second in strength. The judiciary, on the other hand, can ordain nothing. It commands neither the purse nor the sword. It has scarcely any patronage. Its functions are not active but deliberative. Its main province is to declare the meaning of the laws; and, in extraordinary cases, it must even look up to the executive aid for the execution of its decisions. Its chief strength is in the veneration which it is able to inspire by the wisdom and rectitude of its judgments.

This character of the judiciary clearly indicates that it is not only the weakest of the three departments of power, but, also, as it regards the security and preservation of civil liberty, by far the safest. In a conflict with the other departments, it will be happy if it can defend itself—to annoy them is beyond its power. In vain would it singly attempt enterprises against the rights of the citizens. The other department could quickly arrest its arm and punish its temerity. It can only, then, become an effectual instrument of oppression, when it is combined with one of the more active and powerful organs; and against a combination of this sort, the true and best guard is a complete independence of each and both of them. Its dependence on either will imply and involve a subserviency to the views of the department on which it shall depend. Its independence of both will render it a powerful check upon the others, and a precious shield to the rights of persons and property. Safety, liberty, are therefore inseparably con-

nected with the real and substantial independence of the courts and judges.

It is plainly to be inferred from the instrument itself, that these were governing principles in the formation of our Constitution: that they were in fact so, will hereafter be proved by the contemporary exposition of persons who, having been themselves members of the body that framed it, must be supposed to have understood the views with which it was framed. Those principles suggest the highest motives of constitutional policy against that construction which places the existence of the judges at the mercy of the Legislature. They instruct us, that to prevent a concentration of powers, *the essence of despotism*, it is essential, that the departments among which they shall be distributed, should be effectually independent of each other; and that, it being impossible to reconcile this independence with a right in any one or two of them to annihilate at discretion the organs of the other, it is contrary to all just reasoning to imply or infer such a right. So far from its being correct, that an *express* interdiction is requisite to deprive the Legislature of the power to abolish the judges, the very reverse is the true position. It would require a more express provision susceptible of no other interpretation, to confer on that branch of the government an authority so dangerous to the others, in opposition to the strong presumptions, which arise from the care taken in the Constitution, in conformity with the fundamental maxims of free governments, to establish and preserve the reciprocal and complete independence of the respective branches, first by a separate organization of the departments, next by a precise definition of the powers of each, lastly by precautions to secure to each a permanent support.

Lucius Crassus

GEORGE WASHINGTON

FAREWELL ADDRESS [1]

1796

Washington was greatly disturbed by the factional disputes which developed during his administration and his Farewell Address is primarily a plea for unity. As an exposition of the principles underlying the existence of political parties it should be compared with Madison's tenth number of the *Federalist*.

In contemplating the causes which may disturb our union it occurs as a matter of serious concern that any ground should have been furnished for characterizing parties by *geographical* discriminations—*Northern* and *Southern*, *Atlantic* and *Western*—whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts is to misrepresent the opinions and aims of other districts. You can not shield yourselves too much against the jealousies and heartburnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our Western country have lately had a useful lesson on this head. They have seen in the negotiation by the Executive and in the unanimous ratification by the Senate of the treaty with Spain, and in the universal satisfaction at that event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them of a policy in the General Government and in the Atlantic States unfriendly to their interests in regard to the Mississippi. They have been witnesses to the formation of two treaties—that with Great Britain and that with Spain—which secure to them everything they could desire in respect to our foreign relations toward confirming their prosperity. Will it not be their wisdom to rely for the preservation of these advantages on the union by which they were procured? Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their brethren and connect them with aliens?

[1] *Messages and Papers of the Presidents*. Edited by James D. Richardson. Bureau of National Literature and Art. 1907. Vol. I, pp. 216–20. For the various drafts of the Message, see *The Writings of George Washington*. Edited by Worthington C. Ford. New York: G. P. Putnam's Sons. 1892. Vol. XIII.

To the efficacy and permanency of your union a government for the whole is indispensable. No alliances, however strict, between the parts can be an adequate substitute. They must inevitably experience the infractions and interruptions which all alliances in all times have experienced. Sensible of this momentous truth, you have improved upon your first essay by the adoption of a Constitution of Government better calculated than your former for an intimate union and for the efficacious management of your common concerns. This Government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists till changed by an explicit and authentic act of the whole people is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government presupposes the duty of every individual to obey the established government.

All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle and of fatal tendency. They serve to organize faction; to give it an artificial and extraordinary force; to put in the place of the delegated will of the nation the will of a party, often a small but artful and enterprising minority of the community, and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction rather than the organ of consistent and wholesome plans, digested by common counsels and modified by mutual interests.

However combinations or associations of the above description may now and then answer popular ends, they are likely in the course of time and things to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to

subvert the power of the people, and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion.

Toward the preservation of your Government and the permanency of your present happy state, it is requisite not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect in the forms of the Constitution alterations which will impair the energy of the system, and thus to undermine what can not be directly overthrown. In all the changes to which you may be invited remember that time and habit are at least as necessary to fix the true character of governments as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitution of a country; that facility in changes upon the credit of mere hypothesis and opinion exposes to perpetual change, from the endless variety of hypothesis and opinion; and remember especially that for the efficient management of your common interests in a country so extensive as ours a government of as much vigor as is consistent with the perfect security of liberty is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the danger of parties in the State, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which

in different ages and countries has perpetrated the most horrible enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute power of an individual, and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation on the ruins of public liberty.

Without looking forward to an extremity of this kind (which nevertheless ought not to be entirely out of sight), the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

It serves always to distract the public councils and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another; foments occasionally riot and insurrection. It opens the door to foreign influence and corruption, which find a facilitated access to the government itself through the channels of party passion. Thus the policy and the will of one country are subjected to the policy and will of another.

There is an opinion that parties in free countries are useful checks upon the administration of the government, and serve to keep alive the spirit of liberty. This within certain limits is probably true; and in governments of a monarchical cast patriotism may look with indulgence, if not with favor, upon the spirit of party. But in those of the popular character, in governments purely elective, it is a spirit not to be encouraged. From their natural tendency it is certain there will always be enough of that spirit for every salutary purpose; and there being constant danger of excess, the effort ought to be by force of public opinion to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume.

It is important, likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments

in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominates in the human heart is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions by the others, has been evinced by experiments ancient and modern, some of them in our country and under our own eyes. To preserve them must be as necessary as to institute them. If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness—these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, Where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

It is substantially true that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force to every species of free government. Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric? Promote, then, as an object of primary importance, institutions for the general diffusion of

knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened. . . .

THOMAS JEFFERSON

OPINION ON THE CONSTITUTIONALITY OF A NATIONAL BANK[1]

1791

In this paper Jefferson presented one of the first reasoned arguments in favor of the narrow or strict construction of the powers granted to the national government by the Constitution.

I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." [Xth amendment.] To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution.

1. They are not among the powers specially enumerated: for these are: 1st. A power to lay taxes for the purpose of paying the debts of the United States; but no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, its origination in the Senate would condemn it by the Constitution.

2. "To borrow money." But this bill neither borrows money nor ensures the borrowing it. The proprietors of the bank will be just as free as any other money holders, to lend or not to lend their money to the public. The operation proposed in the bill, first, to lend them two millions, and then to borrow them back again, cannot change the nature of the latter act, which will still be a payment, and not a loan, call it by what name you please.

[1] *The Writings of Thomas Jefferson*, ed. Ford, vol. V, pp. 284–89.

3. To "regulate commerce with foreign nations, and among the States, and with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts. He who erects a bank, creates a subject of commerce in its bills; so does he who makes a bushel of wheat, or digs a dollar out of the mines; yet neither of these persons regulates commerce thereby. To make a thing which may be bought and sold, is not to prescribe regulations for buying and selling. Besides, if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external. For the power given to Congress by the Constitution does not extend to the internal regulation of the commerce of a State, (that is to say of the commerce between citizen and citizen,) which remain exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes. Accordingly the bill does not propose the measure as a regulation of trade, but as "productive of considerable advantages to trade." Still less are these powers covered by any other of the special enumerations.

II. Nor are they within either of the general phrases, which are the two following:

1. To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for *the purpose* of providing for the general welfare." For the laying of taxes is the *power*, and the general welfare the *purpose* for which the power is to be exercised. They are not to lay taxes *ad libitum for any purpose they please;* but only *to pay the debts or provide for the welfare of the Union.* In like manner, they are not *to do anything they please* to provide for the general welfare, but only to *lay taxes* for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless.

It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

It is an established rule of construction where a phrase will bear

either of two meanings, to give it that which will allow some meaning to the other parts of the instrument, and not that which would render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. It is known that the very power now proposed *as a means* was rejected as *an end* by the Convention which formed the Constitution. A proposition was made to them to authorize Congress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected, and one of the reasons for rejection urged in debate was, that then they would have a power to erect a bank, which would render the great cities, where there were prejudices and jealousies on the subject, adverse to the reception of the Constitution.

2. The second general phrase is, "to make all laws *necessary* and proper for carrying into execution the enumerated powers." But they can all be carried into execution without a bank. A bank therefore is not *necessary*, and consequently not authorized by this phrase.

It has been urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true: yet the Constitution allows only the means which are "*necessary*," not those which are merely "convenient" for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it will go to everyone, for there is not one which ingenuity may not torture into a *convenience* in some instance *or other*, to *some one* of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one power, as before observed. Therefore it was that the Constitution restrained them to the *necessary* means, that is to say, to those means without which the grant of power would be nugatory.

But let us examine this convenience and see what it is. The report on this subject, page 3, states the only *general* convenience to be, the preventing the transportation and re-transportation of money between the States and the treasury, (for I pass over the increase of circulating medium, ascribed to it as a want, and which, according to my ideas of paper money, is clearly a demerit.) Every State will have to pay a sum of tax money into the

treasury; and the treasury will have to pay, in every State, a part of the interest on the public debt, and salaries to the officers of government resident in that State. In most of the States there will still be a surplus of tax money to come up to the seat of government for the officers residing there. The payments of interest and salary in each State may be made by treasury orders on the State collector. This will take up the greater part of the money he has collected in this State, and consequently prevent the great mass of it from being drawn out of the State. If there be a balance of commerce in favor of that State against the one in which the government resides, the surplus of taxes will be remitted by the bills of exchange drawn for that commercial balance. And so it must be if there was a bank. But if there be no balance of commerce, either direct or circuitous, all the banks in the world could not bring up the surplus of taxes, but in the form of money. Treasury orders then, and bills of exchange may prevent the displacement of the main mass of the money collected, without the aid of any bank; and where these fail, it cannot be prevented even with that aid.

Perhaps, indeed, bank bills may be a more *convenient* vehicle than treasury orders. But a little *difference* in the degree of *convenience* cannot constitute the necessity which the Constitution makes the ground for assuming any non-enumerated power.

Besides; the existing banks will, without a doubt, enter into arrangements for lending their agency, and the more favorable, as there will be a competition among them for it; whereas the bill delivers us up bound to the national bank, who are free to refuse all arrangement, but on their own terms, and the public not free, on such refusal, to employ any other bank. . . .

Can it be thought that the Constitution intended that for a shade or two of *convenience*, more or less, Congress should be authorized to break down the most ancient and fundamental laws of the several States; such as those against Mortmain, the laws of Alienage, the rules of descent, the acts of distribution, the laws of escheat and forfeiture, the laws of monopoly? Nothing but a necessity invincible by any other means, can justify such a prostitution of laws, which constitute the pillars of our whole system of jurisprudence. Will Congress be too strait-laced to carry the Constitution into honest effect, unless they may pass over the foundation-laws of the Stage government for the slightest convenience of theirs?

The negative of the President is the shield provided by the Constitution to protect against the invasion of the legislature: 1. The right of the Executive. 2. Of the Judiciary. 3. Of the States and State legislatures. The present is the case of a right remaining exclusively with the States, and consequently one of those intended by the Constitution to be placed under its protection.

It must be added, however, that unless the President's mind on a view of everything which is urged for and against this bill, is tolerably clear that it is unauthorized by the Constitution; if the pro and the con hang so even as to balance his judgment, a just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion. It is chiefly for cases where they are clearly misled by error, ambition, or interest, that the Constitution has placed a check in the negative of the President. . . .

KENTUCKY RESOLUTIONS [1]

1798

The alien and sedition laws enacted during Adams's administration aroused an immense amount of opposition, particularly in the south and west. The legislatures of Kentucky and Virginia adopted resolutions, prepared by Jefferson and Madison respectively, containing arguments against the constitutionality of the acts. Copies of these resolutions were sent to the other states. Seven states sent replies; all of them were unfavorable.

I. RESOLVED, that the several states composing the United States of America, are not united on the principle of unlimited submission to their General Government; but that by compact under the style and title of a Constitution for the United States and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving each State to itself, the residuary mass of right to their own self-Government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force: That to this compact each

[1] A facsimile of the Resolutions sent by Kentucky to the various states appears in Jefferson's *Writings*, ed. Ford, vol. VII, between pages 288 and 289. Jefferson's drafts are to be found on pages 289–309.

State acceded as a State, and is an integral party, its co-States forming, as to itself, the other party: That the Government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

II. Resolved, that the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offenses against the laws of nations, and no other crimes whatever, and it being true as a general principle, and one of the amendments to the Constitution having also declared "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," therefore also . . . [the Sedition Act of July 14, 1798] . . . ; as also the act passed by them on the 27th day of June, 1798, entitled "An act to punish frauds committed on the Bank of the United States" (and all other their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution), are altogether void and of no force, and that the power to create, define, and punish such other crimes is reserved, and of right appertains solely and exclusively to the respective States, each within its own Territory.

III. Resolved, that it is true as a general principle, and is also expressly declared by one of the amendments to the Constitution that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people;" and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States, or to the people: That thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be

separated from their use should be tolerated rather than the use be destroyed; and thus also they guarded against all abridgment by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same, as this State, by a law passed on the general demand of its citizens, had already protected them from all human restraint or interference: And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution which expressly declares, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press," thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch, that whatever violates either, throws down the sanctuary which covers the others, and that libels, falsehoods, defamation equally with heresy and false religion, are withheld from the cognizance of Federal tribunals. That therefore . . . [the Sedition Act] . . . , which does abridge the freedom of the press, is not law, but is altogether void and of no effect.

IV. Resolved, that alien friends are under the jurisdiction and protection of the laws of the State wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual States distinct from their power over citizens; and it being true as a general principle, and one of the amendments to the Constitution having also declared that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," the . . . [Alien Act of June 22, 1798] . . . , which assumes power over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

V. Resolved, that in addition to the general principle as well as the express declaration, that powers not delegated are reserved, another and more special provision inserted in the Constitution from abundant caution has declared, "that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808." That this Commonwealth does admit the migration of alien friends described as the subject of the said

act concerning aliens; that a provision against prohibiting their migration is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them when migrated is equivalent to a prohibition of their migration, and is therefore contrary to the said provision of the Constitution, and void.

VI. Resolved, that the imprisonment of a person under the protection of the laws of this Commonwealth on his failure to obey the simple order of the President to depart out of the United States, as is undertaken by the said act entitled "An act concerning aliens," is contrary to the Constitution, one amendment to which has provided, that "no person shall be deprived of liberty without due process of law," and that another having provided "that in all criminal prosecutions, the accused shall enjoy the right to a public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defense," the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favour, without defense, without counsel, is contrary to these provisions also of the Constitution, is therefore not law, but utterly void and of no force. That transferring the power of judging any person who is under the protection of the laws, from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides, that "the judicial power of the United States shall be vested in courts, the judges of which shall hold their offices during good behavior," and that the said act is void for that reason also; and it is further to be noted, that this transfer of judiciary power is to that magistrate of the general government who already possesses all the executive, and a qualified negative in all the legislative powers.

VII. Resolved, that the construction applied by the general government (as is evinced by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defense,

and general welfare of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the Constitution: That words meant by that instrument to be subsidiary only to the execution of the limited powers ought not to be so construed as themselves to give unlimited powers, nor a part so to be taken as to destroy the whole residue of the instrument: That the proceedings of the general government under color of these articles will be a fit and necessary subject for revisal and correction at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

VIII. Resolved, that the preceding Resolutions be transmitted to the Senators and Representatives in Congress from this Commonwealth, who are hereby enjoined to present the same to their respective Houses, and to use their best endeavors to procure, at the next session of Congress, a repeal of the aforesaid unconstitutional and obnoxious acts.

IX. Resolved, lastly, that the Governor of this Commonwealth be, and is hereby authorized and requested to communicate the preceding Resolutions to the Legislatures of the several States, to assure them that this Commonwealth considers Union for specified National purposes, and particularly for those specified in their late Federal Compact, to be friendly to the peace, happiness, and prosperity of all the States: that faithful to that compact according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government, and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these States: And that, therefore, this Commonwealth is determined, as it doubts not its co-States are, tamely to submit to undelegated and consequently unlimited powers in no man or body of men on earth: that if the acts before specified should stand, these conclusions would flow from them; that the general government may place any act they think proper on the list of crimes and punish it themselves, whether enumerated or not enumerated by the

Constitution as cognizable by them: that they may transfer its cognizance to the President or any other person, who may himself be the accuser, counsel, judge, and jury, whose *suspicions* may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction: that a very numerous and valuable description of the inhabitants of these States being by this precedent reduced as outlaws to the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no rampart now remains against the passions and the powers of a majority of Congress, to protect from a like exportation or other more grievous punishment the minority of the same body, the legislatures, judges, governors, and counselors of the States, nor their other peaceable inhabitants who may venture to reclaim the constitutional rights and liberties of the State and people, or who for other causes, good or bad, may be obnoxious to the views or marked by the suspicions of the President, or be thought dangerous to his or their elections or other interests, public or personal: that the friendless alien has indeed been selected as the safest subject of a first experiment, but the citizen will soon follow, or rather has already followed for, already has a sedition act marked him as its prey: that these and successive acts of the same character, unless arrested on the threshold, may tend to drive these States into revolution and blood, and will furnish new calumnies against Republican governments, and new pretexts for those who wish it to be believed, that man cannot be governed but by a rod of iron: that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism: free government is founded in jealousy and not in confidence; it is jealousy and not confidence which prescribes limited Constitutions to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which and no further our confidence may go; and let the honest advocate of confidence read the alien and sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits; let him say what the government is if it be not a tyranny, which the men of our choice have conferred on the President, and the President of our choice has assented to and accepted over the friendly strangers, to whom the

mild spirit of our country and its laws had pledged hospitality and protection: that the men of our choice have more respected the bare suspicions of the President than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power then let no more be heard of confidence in man, but bind him down from mischief by the claims of the Constitution. That this Commonwealth does therefore call on its co-States for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or are not authorized by the Federal Compact. And it doubts not that their sense will be so announced as to prove their attachment unaltered to limited government, whether general or particular and that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked on a common bottom with their own: That they will concur with this Commonwealth in considering the said acts so palpably against the Constitution as to amount to an undisguised declaration, that the compact is not meant to be the measure of the powers of general government, but that it will proceed in the exercise over these States of all powers whatsoever: That they will view this as seizing the rights of the States and consolidating them in the hands of the general government with a power assumed to bind the States (not merely in cases made Federal) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent: That this would be to surrender the form of government we have chosen, and to live under one deriving its powers from its own will, and not from our authority; and that the co-States, recurring to their natural right in cases not made Federal, will concur in declaring these acts void and of no force, and will each unite with this Commonwealth in requesting their repeal at the next session of Congress.

FIRST INAUGURAL ADDRESS[1]

1801

During the contest of opinion through which we have passed the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely and to speak and to write what they think; but this being now decided by the voice of the nation, announced according to the rules of the constitution, all will, of course, arrange themselves under the will of the law, and unite in common efforts for the common good. All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression. Let us, then, fellow-citizens, unite with one heart and one mind. Let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things. And let us reflect that, having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions. During the throes and convulsions of the ancient world, during the agonizing spasms of infuriated man, seeking through blood and slaughter his long-lost liberty, it was not wonderful that the agitation of the billows should reach even this distant and peaceful shore; that this should be more felt and feared by some and less by others, and should divide opinions as to measures of safety. But every difference of opinion is not a difference of principle. We are all Republicans, we are all Federalists. If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it. I know, indeed, that some honest men fear that a republican government can not be strong, that this Government is not strong enough; but would the honest patriot, in the full tide of successful experiment, abandon a government which has so far kept us

[1] *Messages and Papers of the Presidents*, vol. I, pp. 322–24. For a draft slightly different from that delivered see Jefferson's *Writings*, ed. Ford, vol. VIII, pp. 685–89.

free and firm on the theoretic and visionary fear that this Government, the world's best hope, may by possibility want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest Government on earth. I believe it the only one where every man, at the call of the law, would fly to the standard of the law, and would meet invasions of the public order as his own personal concern. Sometimes it is said that man can not be trusted with the government of himself. Can he, then, be trusted with the government of others? Or have we found angels in the forms of kings to govern him? Let history answer this question.

Let us, then, with courage and confidence pursue our own Federal and Republican principles, our attachment to union and representative government. Kindly separated by nature and a wide ocean from the exterminating havoc of one quarter of the globe; too high-minded to endure the degradations of the others; possessing a chosen country, with room enough for our descendants to the thousandth and thousandth generation; entertaining a due sense of our equal right to the use of our own faculties, to the acquisitions of our own industry, to honor and confidence from our fellow-citizens, resulting not from birth, but from our actions and their sense of them; enlightened by a benign religion, professed, indeed, and practiced in various forms, yet all of them inculcating honesty, truth, temperance, gratitude, and the love of man; acknowledging and adoring an overruling Providence, which by all its dispensations proves that it delights in the happiness of man here and his greater happiness hereafter—with all these blessings, what more is necessary to make us a happy and a prosperous people? Still one thing more, fellow-citizens—a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government, and this is necessary to close the circle of our felicities.

About to enter, fellow-citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its Administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its

limitations. Equal and exact justice to all men, of whatever state or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; the support of the State governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies; the preservation of the General Government in its whole constitutional vigor, as the sheet anchor of our peace at home and safety abroad; a jealous care of the right of election by the people—a mild and safe corrective of abuses which are lopped by the sword of revolution where peaceable remedies are unprovided; absolute acquiescence in the decisions of the majority, the vital principle of republics, from which is no appeal but to force, the vital principle and immediate parent of despotism; a well-disciplined militia, our best reliance in peace and for the first moments of war, till regulars may relieve them; the supremacy of the civil over the military authority; economy in the public expense, that labor may be lightly burthened; the honest payment of our debts and sacred preservation of the public faith; encouragement of agriculture, and of commerce as its handmaid; the diffusion of information and arraignment of all abuses at the bar of the public reason; freedom of religion; freedom of the press, and freedom of person under the protection of the habeas corpus, and trial by juries impartially selected. These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment. They should be the creed of our political faith, the text of civic instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety. . . .

LETTER TO JOHN ADAMS [1]

October 28, 1815

In this and the following letters written to his friends long after he had retired from active participation in politics Jefferson summed up much of his political philosophy.

. . . I agree with you that there is a natural aristocracy among men. The grounds of this are virtue and talents. Formerly, bodily powers gave place among the aristoi. But since the invention of gunpowder has armed the weak as well as the strong with missile death, bodily strength, like beauty, good humor, politeness and other accomplishments, has become but an auxiliary ground for distinction. There is also an artificial aristocracy, founded on wealth and birth, without either virtue or talents; for with these it would belong to the first class. The natural aristocracy I consider as the most precious gift of nature, for the instruction, the trusts, and government of society. And indeed, it would have been inconsistent in creation to have formed man for the social state, and not to have provided virtue and wisdom enough to manage the concerns of the society. May we not even say, that that form of government is the best, which provides the most effectually for a pure selection of these natural aristoi into the offices of government? The artificial aristocracy is a mischievous ingredient in government, and provision should be made to prevent its ascendency. On the question, what is the best provision, you and I differ; but we differ as rational friends, using the free exercise of our own reason, and mutually indulging its errors. You think it best to put the pseudo-aristoi into a separate chamber of legislation, where they may be hindered from doing mischief by their co-ordinate branches, and where, also, they may be a protection to wealth against the Agrarian and plundering enterprises of the majority of the people. I think that to give them power in order to prevent them from doing mischief, is arming them for it, and increasing instead of remedying the evil. For if the co-ordinate branches can arrest their action, so may they that of the co-ordinates. Mischief may be done negatively as well as positively. Of this, a cabal in the Senate of the United States has

[1] *The Writings of Thomas Jefferson*, ed. Ford, vol. IX, pp. 425–29.

furnished many proofs. Nor do I believe them necessary to protect the wealthy; because enough of these will find their way into every branch of the legislation, to protect themselves. From fifteen to twenty legislatures of our own, in action for thirty years past, have proved that no fears of an equalization of property are to be apprehended from them. I think the best remedy is exactly that provided by all our constitutions, to leave to the citizens the free election and separation of the aristoi from the pseudo-aristoi, of the wheat from the chaff. In general they will elect the really good and wise. In some instances, wealth may corrupt, and birth blind them; but not in sufficient degree to endanger the society.

It is probable that our difference of opinion may, in some measure, be produced by a difference of character in those among whom we live. From what I have seen of Massachusetts and Connecticut myself, and still more from what I have heard, and the character given of the former by yourself, who know them so much better, there seems to be in those two States a traditionary reverence for certain families, which has rendered the offices of the government nearly hereditary in those families. I presume that from an early period of your history, members of those families happening to possess virtue and talents, have honestly exercised them for the good of the people, and by their services have endeared their names to them. In coupling Connecticut with you, I mean it politically only, not morally. For having made the Bible the common law of their land, they seemed to have modeled their morality on the story of Jacob and Laban. But although this hereditary succession to office with you, may, in some degree, be founded in real family merit, yet in a much higher degree, it has proceeded from your strict alliance of Church and State. These families are canonised in the eyes of the people on common principles, "you tickle me, and I will tickle you." In Virginia we have nothing of this. Our clergy, before the revolution, having been secured against rivalship by fixed salaries, did not give themselves the trouble of acquiring influence over the people. Of wealth, there were great accumulations in particular families, handed down from generation to generation, under the English law of entails. But the only object of ambition for the wealthy was a seat in the King's Council. All their court then was paid to the crown and its creatures; and they Philipised in all collisions between the King and the people.

Hence they were unpopular; and that unpopularity continues attached to their names. A Randolph, a Carter, or a Burwell must have great personal superiority over a common competitor to be elected by the people even at this day. At the first session of our legislature after the Declaration of Independence, we passed a law abolishing entails. And this was followed by one abolishing the privilege of primogeniture, and dividing the lands of intestates equally among all their children, or other representatives. These laws, drawn by myself, laid the ax to the foot of pseudo-aristocracy. And had another which I prepared been adopted by the legislature, our work would have been complete. It was a bill for the more general diffusion of learning. This proposed to divide every county into wards of five or six miles square, like your townships; to establish in each ward a free school for reading, writing and common arithmetic; to provide for the annual selection of the best subjects from these schools, who might receive, at the public expense, a higher degree of education at a district school; and from these district schools to select a certain number of the most promising subjects, to be completed at an University, where all the useful sciences should be taught. Worth and genius would thus have been sought out from every condition of life, and completely prepared by education for defeating the competition of wealth and birth for public trusts. My proposition had, for a further object, to impart to these wards those portions of self-government for which they are best qualified, by confiding to them the care of their poor, their roads, police, elections, the nomination of jurors, administration of justice in small cases, elementary exercises of militia; in short, to have made them little republics, with a warden at the head of each, for all those concerns which, being under their eye, they would better manage then the larger republics of the county or State. A general call of ward meetings by their wardens on the same day through the State, would at any time produce the genuine sense of the people on any required point, and would enable the State to act in mass, as your people have so often done, and with so much effect by their town meetings. The law for religious freedom, which made a part of this system, having put down the aristocracy of the clergy, and restored to the citizen the freedom of the mind, and those of entails and descents nurturing an equality of condition among them, this on education would have raised the mass of the people to the high ground of

moral respectability necessary to their own safety, and to orderly government; and would have completed the great object of qualifying them to select the veritable aristoi, for the trusts of government, to the exclusion of the pseudalists. . . Although this law has not yet been acted on but in a small and inefficient degree, it is still considered as before the legislature, with other bills of the revised code, not yet taken up, and I have great hope that some patriotic spirit will, at a favorable moment, call it up, and make it the keystone of the arch of our government.

With respect to aristocracy, we should further consider, that before the establishment of the American States, nothing was known to history but the man of the old world, crowded within limits either small or overcharged, and steeped in the vices which that situation generates. A government adapted to such men would be one thing; but a very different one, that for the man of these States. Here every one may have land to labor for himself, if he chooses; or, preferring the exercise of any other industry, may exact for it such compensation as not only to afford a comfortable subsistence, but wherewith to provide for a cessation from labor in old age. Every one, by his property, or by his satisfactory situation, is interested in the support of law and order. And such men may safely and advantageously reserve to themselves a wholesome control over their public affairs, and a degree of freedom, which, in the hands of the *canaille* of the cities of Europe, would be instantly perverted to the demolition and destruction of everything public and private. The history of the last twenty-five years of France, and of the last forty years in America, nay of its last two hundred years, proves the truth of both parts of this observation.

But even in Europe a change has sensibly taken place in the mind of man. Science had liberated the ideas of those who read and reflect, and the American example had kindled feelings of right in the people. An insurrection has consequently begun, of science, talents, and courage, against rank and birth, which have fallen into contempt. It has failed in its first effort, because the mobs of the cities, the instrument used for its accomplishment, debased by ignorance, poverty and vice, could not be restrained to rational action. But the world will recover from the panic of this first catastrophe. Science is progressive, and talents and enterprise on the alert. Resort may be had to the people of the

country, a more governable power from their principles and subordination; and rank, and birth, and tinsel-aristocracy will finally shrink into insignificance, even there. This, however, we have no right to meddle with. It suffices for us, if the moral and physical condition of our citizens qualifies them to select the able and good for the direction of their government, with a recurrence of elections at such short periods as will enable them to displace an unfaithful servant, before the mischief he meditates may be irremediable.

I have thus stated my opinion on a point on which we differ, not with a view to controversy, for we are both too old to change opinions which are the result of a long life of inquiry and reflection; but on the suggestions of a former letter of yours, that we ought not to die before we have explained ourselves to each other. We acted in perfect harmony, through a long and perilous contest for our liberty and independence. A constitution has been acquired, which, though neither of us thinks perfect, yet both consider as competent to render our fellow citizens the happiest and the securest on whom the sun has ever shone. If we do not think exactly alike as to its imperfections, it matters little to our country, which, after devoting to it long lives of disinterested labor, we have delivered over to our successors in life, who will be able to take care of it and of themselves. . . .

LETTER TO P. S. DU PONT DE NEMOURS[1]

April 24, 1816

I received, my dear friend, your letter covering the constitution for your Equinoctial republics, just as I was setting out for this place. I brought it with me, and have read it with great satisfaction. I suppose it well formed for those for whom it was intended, and the excellence of every government is its adaptation to the state of those to be governed by it. For us it would not do. . . . Your process produces therefore a structure of government from which the fundamental principle of ours is excluded. You first set down as zeros all individuals not having lands, which are the greater number in every society of long standing.

[1] *The Writings of Thomas Jefferson*, ed. Ford, vol. X, pp. 22, 23–25.

Those holding lands are permitted to manage in person the small affairs of their commune or corporation, and to elect a deputy for the canton; in which election, too, every one's vote is to be an unit, a plurality, or a fraction, in proportion to his landed possessions. The assemblies of cantons, then, elect for the districts; those of districts for circles; and those of circles for the national assemblies. Some of these highest councils, too, are in a considerable degree self-elected, the regency partially, the judiciary entirely, and some are for life. Whenever, therefore, an *esprit de corps*, or of party, gets possession of them, which experience shows to be inevitable, there are no means of breaking it up, for they will never elect but those of their own spirit. Juries are allowed in criminal cases only. I acknowledge myself strong in affection to our own form, yet both of us act and think from the same motive, we both consider the people as our children, and love them with parental affection. But you love them as infants whom you are afraid to trust without nurses; and I as adults whom I freely leave to self-government. And you are right in the case referred to you; my criticism being built on a state of society not under your contemplation. It is, in fact, like a critic on Homer by the laws of the Drama.

But when we come to the moral principles on which the government is to be administered, we come to what is proper for all conditions of society. I meet you there in all the benevolence and rectitude of your native character; and I love myself always most where I concur most with you. Liberty, truth, probity, honor, are declared to be the four cardinal principles of your society. I believe with you that morality, compassion, generosity, are innate elements of the human constitution; that there exists a right independent of force; that a right to property is founded in our natural wants, in the means with which we are endowed to satisfy these wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings; that no one has a right to obstruct another, exercising his faculties innocently for the relief of sensibilities made a part of his nature; that justice is the fundamental law of society; that the majority, oppressing an individual, is guilty of a crime, abuses its strength, and by acting on the law of the strongest breaks up the foundations of society; that action by the citizens in person, in affairs within their reach and competence, and in all others by repre-

sentatives, chosen immediately, and removable by themselves, constitutes the essence of a republic; that all governments are more or less republican in proportion as this principle enters more or less into their composition; and that a government by representation is capable of extension over a greater surface of country than one of any other form. These, my friend, are the essentials in which you and I agree; however, in our zeal for their maintenance, we may be perplexed and divaricate, as to the structure of society most likely to secure them.

In the constitution of Spain, as proposed by the late Cortes, there was a principle entirely new to me, and not noticed in yours, that no person, born after that day, should ever acquire the rights of citizenship until he could read and write. It is impossible sufficiently to estimate the wisdom of this provision. Of all those which have been thought of for securing fidelity in the administration of the government, constant ralliance to the principles of the constitution, and progressive amendments with the progressive advances of the human mind, or changes in human affairs, it is the most effectual. Enlighten the people generally, and tyranny and oppressions of body and mind will vanish like evil spirits at the dawn of day. Although I do not, with some enthusiasts, believe that the human condition will ever advance to such a state of perfection as that there shall no longer be pain or vice in the world, yet I believe it susceptible of much improvement, and most of all, in matters of government and religion; and that the diffusion of knowledge among the people is to be the instrument by which it is to be effected. The constitution of the Cortes had defects enough; but when I saw in it this amendatory provision, I was satisfied all would come right in time, under its salutary operation. No people have more need of a similar provision than those for whom you have felt so much interest. No mortal wishes them more success than I do. But if what I have heard of the ignorance and bigotry of the mass be true, I doubt their capacity to understand and to support a free government; and fear that their emancipation from the foreign tyranny of Spain, will result in a military despotism at home. Palacios may be great; others may be great; but it is the multitude which possess force: and wisdom must yield to that. For such a condition of society, the constitution you have devised is probably the best imaginable. It is certainly calculated to elicit the best talents; although per-

haps not well guarded against the egoism of its functionaries. But that egoism will be light in comparison with the pressure of a military despot, and his army of Janissaries. Like Solon to the Athenians, you have given to your Columbians, not the best possible government, but the best they can bear. . . .

LETTER TO SAMUEL KERCHEVAL[1]

July 12, 1816

Sir,—I duly received your favor of June the 13th, with the copy of the letters on the calling a convention, on which you are pleased to ask my opinion. . . .

The sum of these amendments is, 1. General Suffrage. 2. Equal representation in the legislature. 3. An executive chosen by the people. 4. Judges elective or amovable. 5. Justices, jurors, and sheriffs elective. 6. Ward divisions. And 7. Periodical amendments of the constitution.

I have thrown out these as loose heads of amendment, for consideration and correction; and their object is to secure self-government by the republicanism of our constitution, as well as by the spirit of the people; and to nourish and perpetuate that spirit. I am not among those who fear the people. They, and not the rich, are our dependence for continued freedom. And to preserve their independence, we must not let our rulers load us with perpetual debt. We must make our election between *economy and liberty,* or *profusion and servitude.* . . .

Some men look at constitutions with sanctimonious reverence, and deem them like the arc of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and forty years of experience in government is worth a century of book-reading; and this they would say themselves, were they to rise from the dead. I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known,

[1] *Op. cit.*, pp, 37, 41, 42–44.

we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors. It is this preposterous idea which has lately deluged Europe in blood. Their monarchs, instead of wisely yielding to the gradual change of circumstances, of favoring progressive accommodation to progressive improvement, have clung to old abuses, entrenched themselves behind steady habits, and obliged their subjects to seek through blood and violence rash and ruinous innovations, which, had they been referred to the peaceful deliberations and collected wisdom of the nation, would have been put into acceptable and salutary forms. Let us follow no such examples, nor weakly believe that one generation is not as capable as another of taking care of itself, and of ordering its own affairs. Let us, as our sister States have done, avail ourselves of our reason and experience, to correct the crude essays of our first and unexperienced, although wise, virtuous, and well-meaning councils. And lastly, let us provide in our constitution for its revision at stated periods. What these periods should be, nature herself indicates. By the European tables of mortality, of the adults living at any one moment of time, a majority will be dead in about nineteen years. At the end of that period, then, a new majority is to come into place; or, in other words, a new generation. Each generation is as independent as the one preceding, as that was of all which had gone before. It has then, like them, a right to choose for itself the form of government it believes most promotive of its own happiness; consequently, to accommodate to the circumstances in which it finds itself, that received from its predecessors; and it is for the peace and good of mankind, that a solemn opportunity of doing this every nineteen or twenty years, should be provided by the constitution; so that it may be handed on, with periodical repairs, from generation to generation, to the end of time, if anything human can so long endure. It is now forty years since

the constitution of Virginia was formed. The same tables inform us, that, within that period, two-thirds of the adults then living are now dead. Have then the remaining third, even if they had the wish, the right to hold in obedience to their will, and to laws heretofore made by them, the other two-thirds, who, with themselves, compose the present mass of adults? If they have not, who has? The dead? But the dead have no rights. They are nothing; and nothing cannot own something. Where there is no substance, there can be no accident. This corporeal globe, and everything upon it, belong to its present corporeal inhabitants, during their generation. They alone have a right to direct what is the concern of themselves alone, and to declare the law of that direction; and this declaration can only be made by their majority. That majority, then, has a right to depute representatives to a convention, and to make the constitution what they think will be the best for themselves. But how collect their voice? This is the real difficulty. If invited by private authority, or county or district meetings, these divisions are so large that few will attend; and their voice will be imperfectly, or falsely pronounced. Here, then, would be one of the advantages of the ward divisions I have proposed. The mayor of every ward, on a question like the present, would call his ward together, take the simple yea or nay of its members, convey these to the county court, who would hand on those of all its wards to the proper general authority; and the voice of the whole people would be thus fairly, fully, and peaceably expressed, discussed, and decided by the common reason of the society. If this avenue be shut to the call of sufferance, it will make itself heard through that of force, and we shall go on, as other nations are doing, in the endless circle of oppression, rebellion, reformation; and oppression, rebellion, reformation, again; and so on forever. . .

LETTER TO THOMAS RITCHIE[1]

December 25, 1820

. . . If there be anything amiss, therefore, in the present state of our affairs, as the formidable deficit lately unfolded to us indicates, I ascribe it to the inattention of Congress to their

[1] *Op. cit.*, pp. 170–71.

duties, to their unwise dissipation and waste of the public contributions. They seemed, some little while ago, to be at a loss for objects whereon to throw away the supposed fathomless funds of the treasury. I had feared the result, because I saw among them some of my old fellow laborers, of tried and known principles, yet often in their minorities. I am aware that in one of their most ruinous vagaries, the people were themselves betrayed into the same phrenzy with their Representatives. The deficit produced, and a heavy tax to supply it, will, I trust, bring both to their sober senses.

But it is not from this branch of government we have most to fear. Taxes and short elections will keep them right. The judiciary of the United States is the subtle corps of sappers and miners constantly working under ground to undermine the foundations of our confederated fabric. They are construing our constitution from a co-ordination of a general and special government to a general and supreme one alone. This will lay all things at their feet, and they are too well versed in English law to forget the maxim, "*boni judicis est ampliare jurisdictionem.*" We shall see if they are bold enough to take the daring stride their five lawyers have lately taken. If they do, then, with the editor of our book, in his address to the public, I will say, that "against this every man should raise his voice," and more, should uplift his arm. Who wrote this admirable address? Sound, luminous, strong, not a word too much, nor one which can be changed but for the worse. That pen should go on, lay bare these wounds of our constitution, expose the decisions *seriatim*, and arouse, as it is able, the attention of the nation to these bold speculators on its patience. Having found, from experience, that impeachment is an impracticable thing, a mere scare-crow, they consider themselves secure for life; they sculk from responsibility to public opinion, the only remaining hold on them, under a practice first introduced into England by Lord Mansfield. An opinion is huddled up in a conclave, perhaps by a majority of one, delivered as if unanimous, and with the silent acquiescence of lazy or timid associates, by a crafty chief judge, who sophisticates the law to his mind, by the turn of his own reasoning. A judiciary law was once reported by the Attorney General to Congress, requiring each judge to deliver his opinion *seriatim* and openly, and then to give it in writing to the clerk to be entered in the record. A judiciary independ-

ent of a king or executive alone, is a good thing; but independence of the will of the nation is a solecism, at least in a republican government. . . .

JOHN TAYLOR

A DEFINITION OF PARTIES; OR THE POLITICAL EFFECTS OF THE PAPER SYSTEM CONSIDERED [1]

1794

For over forty years John Taylor 'of Caroline' was a leader in Virginia politics, an expounder of the principles of Jeffersonianism, and a prolific writer against the works of Hamilton, Adams, and Marshall. This selection is from one of a series of pamphlets published during his first period of service as United States senator. The subject of its attack is the Hamiltonian financial system.

Dedication. The existence of two parties in Congress, is apparent. The fact is disclosed almost upon every important question. Whether the subject be foreign or domestic—relative to war or peace—navigation or commerce—the magnetism of opposite views draws them wide as the poles asunder. The situation of the public good, in the hands of two parties nearly poised as to numbers, must be extremely perilous. Truth is a thing, not of divisibility into conflicting parts, but of unity. Hence both sides cannot be right. Every patriot deprecates a disunion, which is only to be obviated by a national preference of one of these parties. It has therefore become as necessary, as it is difficult, to explore the causes of a political appearance, so baneful to the commonwealth. With this intention were the following pages written. They are consecrated to the people of America.

[3] Usurpations upon constitutional principles, if suffered to acquire maturity, will only yield to the dreadful remedy of a civil war; but if faced in their infancy, an amputation may be adventured, without danger to the body politick. Whilst encountered in the legislature alone, by the weak weapon of human reasoning, so difficult to be distinguished from sophistry, and so

[1] Philadelphia: F. Bailey. 1794.

incomprehensible to self interest, usurpation will stalk boldly forward under the disguise of patriotism; but when plainly exposed to public view, before it is consecrated by time, the people can judge and can will for themselves.

The following statement is the offspring of such impressions. If its genealogy can be traced up to error, we shall rejoice in the removal of our apprehensions for the national safety—if to truth—in the reflection that we have discharged our duty.

The constitution of the United States, was established for the national good, and not for the exclusive benefit of an inconsiderable number of the community.

If the government possesses a sensibility of this obligation, its operations will be chaste—public spirit will mark its measures, and common good will be its fruit. If instead of being responsible, it is callous, it will become the prostitute of a faction—the vehicle of corrupt speculation, and the factor of private interest.

So long as public spirit predominates in a legislature, its measures cannot be fatal; because its errors will be temporary. The instant of its loss is an epoch of a revolution, and the commencement of a tyranny.

This reflection exhibits the single point of investigation; to decide which we must review the more important acts of the government and concisely exhibit their effects—first upon the nation, consisting of near 5,000,000—secondly upon the paper interest, computed at 5,000.

1. The funding system deprived the 5,000,000, without value received of 17 shillings in the pound, upon the whole amount of the national debt—bestowed it upon the 5,000, and doubled the loss upon the 5,000,000, by the remedy of a perpetual tax.

2. The assumption of state debts, by still farther concentrating a paper credit, increased its influential power. The 5,000,000 constitute the subject upon which only this power can act; of course its operation must tend to their injury, and to the benefit of the 5,000.

3. The sinking fund, fed by the *instrumentality* of losing loans, increase, that which it promised to diminish. A treasure gotten at the expense of the 5,000,000, has been kept on hand, and occasionally carried into the market, to enhance the price of stocks. Thus the 5,000,000 are legislated into a broker for the 5,000.

4. The law metamorphosing funded paper into bank stock, added to its fruitfulness; the labour of the 5,000,000 furnishes the nourishment, upon which the 5,000 are soiled through the agency of this institution.

5. Instead of fighting the Indians by a Land-Office, and by sudden incursions of mounted riflemen, which have successfully progressed for two hundred years; an occasion for the gradual introduction, of that which sundry laws carefully denominate "the military *establishment*," has been greedily seized. A standing army, though subsisting upon the 5,000,000, is an ally to the 5,000.

6. The erection of new states out of ceded territory, in faithful compliance with solemn compacts long since entered into with the ceding states, would have generated republicanism; but an expensive and unsuccessful war, may cultivate the public mind into a willingness to treat away this territory to the Indians. New states would be recruits for the 5,000,000. Hence the antipathy of the 5,000 against them.

7. The system of restraining the growth of republicanism, hath disregarded even the veto of the constitution. Treaties have been made with the Creeks and Cherokees, which have dismembered a state, and annulled the rights of citizens to landed property.

8. Propositions for the encouragement of navigation, evidently tended to emancipate America from a dependence upon foreign nations—to save the losses resulting to the union, from the impression made by European wars, upon foreign tonnage—to secure a regular exportation of the bulky commodities of the south—and to establish an important encouragement for the shipping of the north. The system was founded in liberality, and eminently calculated to tighten the bands of fraternity, by the ligament of common interest. But apprehensions for the impost have suppressed every consideration of national good. Neither the interest of all the states—the particular interest of a part—or the preservation of the union, have stood against the circumventions of faction. Even this liberal proposition has been successfully carricatured into the vile semblance of party. And the good of the 5,000 hath in this instance also triumphed over that of the 5,000,000.

9. In short the general government has been an exclamation for money—more money. Obliterate from the statute book, all laws in favor of paper, and the code would almost become a blank.

It exhibits a succession of new burthens upon the 5,000,000, which are a succession of delicious repasts to the 5,000. . . .

[5] All governments are under an influence. They are free or despotic, as this influence is genuine or spurious. A government biassed by private interest in opposition to the public good, is an usurpation both upon principle and compact. Did the constitution intend to produce a government, chiefly dependent upon the will of numbers, or upon the will of wealth? Obviously the former —suppose the latter—both principles are defeated by a paper influence. Although the outrage upon the *rights of men* is the most glaring, yet if we confine ourselves to the general acceptation of the term "property," when the constitution was formed, or take it in its most general sense, the usurpation upon the *rights of property* will also be evident.

Political power is transferred from the nation to a paper fabrick, erected, neither by the people, nor by the constitution but by the government; and consisting of about one hundred and twenty millions of bank and funded debt. Is this a government of numbers?—No—Of property in general?—No—It is a government of paper.

Paper is *in fact* the only representative, both of numbers and of property, bestowed by a faction upon itself, for the purpose of transferring to itself, the property of others. An effect, which never could have been intended by the constitution. . . .

If this representative of property, as the laws have made it, is possessed of the faculty and power of instilling itself into the Legislature, and influencing political questions, the principle of equal representation dictated an equal distribution of it among the several states; otherwise the idea of a political balance, and the concord expected to result from a common interest, are both defeated. The impossibility of effecting this, evinces a radical defect in such a mode of representation.

For instance. Virginia under the paper system of representation, ought to hold 22,000,000 dollars—she holds 1,000,000, and this 1,000,000 is in the hands of 100 individuals. Massachusetts may possibly hold her share of this representative, but it is chiefly, if not entirely, in the hands of 1,000 individuals. Under the paper government therefore, only 100 people in Virginia, and 1,000 in Massachusetts, have really any political existence. Is this the government contemplated by the constitution of the United

States? Or will the great majority of the people in any state sell their birth-right for a mess of paper, into which they are themselves cooked; but of which they can never taste? . . .

Jealous for the preservation of national rights, America has taken an alarm from an attempt of a single creditor, only to sue a state, whilst she quietly suffers a junto of creditors to usurp an unlimited jurisdiction, to render judgments in its own favour, and to issue execution through the medium of legislation. The statute book is almost one continued record of such *adjudications*, or rather, *condemnations*. . . .

[7] Government, though designed to produce national happiness, will be converted by a paper junto simply into a scheme of finance. Instead of dispensing *public welfare*, it will become a credit shop only, to dispense *unequal wealth*. Patriotism will consist in finding out a new subject for taxation. Such a government will calculate its goodness by the rule of its profit, and evince its conscience, by extracting the same proportion from the labour of the nation, as a master does from that of his slaves. . . .

[9] Political property, is distinguishable from natural property. Land cannot be increased by law—paper money may. Land, being incapable of an artificial multiplication, cannot by increasing its quantity, strengthen its influence—with paper the case is different. Land cannot in interest be at enmity with the public good—paper money is often so. Land cannot be incorporated by law, or by an exclusive interest, into a political junto—paper credit may. Land is permanent, paper, fluctuating. . . . If the antithesis is just, the danger to be apprehended from the one, and the confidence which may safely be reposed in the other, evidently evinces that its legislative influence is an usurpation upon the constitution, respecting both the rights of numbers, and the rights of property.

The majority of a nation is the natural enemy of a paper junto, because the legislative influence of the latter, acts upon, and is an usurpation from, the former. The politics of a junto may therefore be accurately anticipated; indeed its theory and practice in all ages is the same. Standing armies—fleets—increase of taxes—extension of influence and of patronage—in short, whatever will obviate all attempts for a reclamation of political rights, will mark its progress. . . .

[13] A paper junto can find an interest in restraining population, even at the expence of the constitution. The danger and difficulty, with which our frontiers are extended, invariably engenders an intrepid republican spirit. The enmity of this spirit to an intriguing junto, is so constant, that it is already regarded as a deadly foe. . . .

[15] We assert not that the failure of annual elections, but that the failure of *real* representation and responsibility, is the commencement of tyrany. Admit that the first idea may be false, because it is trite, yet incontestably the second cannot be refuted by the *naked form of election.*

The unavoidable conclusion now presents itself. A constitutional expulsion of a stock-jobbing paper interest, in every shape, out of the national legislature, can alone recover the lost principles of a representative government, and save the nation from being owned—bought—and sold. . . .

[16] For the truth is, that a secretary of the treasury—an *incorporated* bank—and a funding system, constitute substantially a phalanx of privileged orders, if they can influence the legislature. They are a correct representation of a king—lords—and commons. The first will sway the legislature, by the magic of private interest. The second is a successional body having exclusive rights and legislative weight, without election or representation—and the third is a mode of representation, equivalent to the rotten boroughs of England.

Accordingly our privileged orders have openly sympathised with the privileged orders combined for the suppression of republicanism in France—and the partizans of the latter, fraternize with the former. Ruminate, fellow citizens upon this fact—trace it to all its consequences—anticipate the events of which it is prophetic—and if you are republicans, determine, whether at this momentous crisis, or at any other period, the commonwealth can be safe in the hands of such a faction.

AN INQUIRY INTO THE PRINCIPLES AND POLICY OF THE GOVERNMENT OF THE UNITED STATES[1]

1814

This selection is from the first of four long works on government which appeared during the last ten years of Taylor's life. It was intended to be a critical analysis of the false principles set forth in Adam's *Defence of the Constitutions* and the *Federalist*, particularly the former, and a statement of the true principles of American government. Although it came twenty years after its proper time, it remains the most considerable contribution made by a member of the Jeffersonian group of political theorists.

[1] Mr. Adams's political system, deduces government from a natural fate; the policy of the United States deduces it from moral liberty. . . .

That he must resign his political predestination, and all its consequences, I shall attempt to prove, by shewing, that aristocracies, both ancient and modern, have been variable and artificial; that they have all proceeded from moral, not from natural causes; and that they are evitable and not inevitable.

An opinion "that nature makes kings or nobles" has been the creed of political fatalists, from the commencement of the sect; and confronts its rival creed "that liberty and slavery are regulated by political law. . . ."

[41] The only two modes extant of enslaving nations, are those of armies and the system of paper and patronage. The European nations are subjected by both, so that their chains are doubly riveted. The Americans devoted their effectual precautions to the obsolete modes of title and hierarchy, erected several barriers against the army mode, and utterly disregarded the mode of paper and patronage. The army mode was thought so formidable, that military men are excluded from legislatures, and limited to charters or commissions at will; and the paper mode so harmless, that it is allowed to break the principle of keeping legislative, executive and judicative powers separate and distinct, to infuse itself into all these departments, to unite them in one conspiracy, and to obtain charters or commissions for unrestricted terms, entrenched behind publick faith, and out of the reach, it is said, of national will; which it may assail, wound and destroy with impunity. . . .

[1] Fredericksburg, Virginia: Green and Cady. 1814.

[50] Hereditary aristocracy, supported by perpetuities, is preferable to a paper and patronage aristocracy, because its taxation would be less oppressive, since its landed estate would furnish it with opulence and power; whereas eternal and oppressive taxation is necessary to supply the aristocracy of paper and patronage, with these vital qualities. . . .

[60] We pity the ancients for their dullness in discovering oppressions, so clearly seen by ourselves now that they are exploded. We moderns; we enlightened Americans; we who have abolished hierarchy and title; and we who are submitting to be taxed and enslaved by patronage and paper without being deluded or terrified by the promise of heaven, the denunciation of hell, the penalties of law, the brilliancy and generosity of nobility, or the pageantry and charity of superstition.

A spell is put upon our understanding by the words "publick faith and national credit," which fascinates us into an opinion, that fraud, corruption and oppression, constitute national credit; and debt and slavery, publick faith. This delusion of the aristocracy of the present age, is not less apparent, than the ancient divinity of kings, and yet it required the labours of Locke and Sidney to detect that ridiculous imposture.

Publick faith is made with great solemnity to mount the rostrum, and to pronounce the following lecture:

"Law enacted for the benefit of a nation, is repealable; but law enacted for the benefit of individuals, though oppressive to a nation, is a charter, and irrepealable. The existing generation is under the tutelage of all past generations, and must rely upon the responsibility of the grave for the preservation of its liberty. Posterity, being bound by the contracts of its ancestry, in every case which diminishes its rights, man is daily growing less free by a doctrine which never increases them. A government intrusted with the administration of publick affairs for the good of the nation, has a right to deed away that nation for the good of itself or its partisans, by law charters for monopolies or sinecures; and posterity is bound by these deeds. But although an existing generation can never reassume the liberty or property held by its ancestor, it may recompence itself by abridging or abolishing the rights of its descendant." . . .

[400] Mr. Adams considers our division of power, as the same principle with his balance of orders. We consider these principles

as opposite and inimical. Power is divided by our policy, that the people may maintain their sovereignty; by the system of orders, to destroy the sovereignty of the people. Our principle of division is used, to reduce power to that degree of temperature, which make it a blessing and not a curse; its nature resembling fire; which, uncontrolled, consumes; in moderation, warms. The principle of its division among orders, is to erect an omnipotent power, able, like an irresistible conflagration, to consume every thing in its way.

This radical errour forced Mr. Adams to overlook the prime division of power, between the people and the government; the federal division of power between the general and state governments; and that beautiful division of election, by which an ochlocracy or mob government is prevented; and to convert the subordinate divisions of power, which are only details of these superior principles, into sovereign orders and virtual representation. . . .

[402] The basis of our policy, like the basis of modern philosophy, is the constancy of nature, in her moral, as well as in her physical operations. A frequent or long concomitancy between cause and effect, establishes a particular fact, from which we are enabled to infer a general law. A concomitancy between hereditary orders or exclusive factious interests, and political misery, has constantly appeared throughout the annals of human nature; and a concomitancy between political equality and political happiness, has endured in America for the space of thirty-five years in above thirteen separate governments, making an experience equal to four hundred years, to which ought to be added near two centuries previous to the revolution, not in theory, but in fact. Hence necessarily results a general law, unless nature, in her moral operations, pursues principles the reverse of those, to which she strictly adheres in her physical; and is capricious, arbitrary and inconsistent. If the fact we contend for is ascertained, and if from this fact a general law is discovered, it then becomes as certain and inevitable, that political misery, will be an effect of hereditary orders or factitious interests, as that light will be the effect of the rising of the sun. Let the intellectual, like the material philosopher, reason from facts, and the phenomena of mind will become as well understood for temporal purposes, as those of body.

A law of nature constitutes truth. This would suffice for human use, if we were unable to discover how it became a law, as is fre-

quently the case. If these orders or interests tend to excite, not the good, but the evil qualities of man; the moral power which enacts the law, and the impossibility of its abrogation, both become manifest. It is as unnatural to expect, by artificial means, to cause such orders or interests to produce peace, justice and happiness, as that any artificial arrangement of a society composed of lions, wolves and bears, would prevent the effects of their natural qualities; because the natural qualities of moral beings (if the expression is allowable) such as hereditary orders and separate factitious interests, are not less certain and unchangeable, than those of these beasts.

The inability of mere form or artificial arrangement, to defeat a natural law, even of the moral kind, is demonstrated in the experience of the United States. These forms or arrangements have been frequently changed, and are different among the states. But the irresistible power of the moral principles common to all, compels every modification to be subservient to its will. And the good effects under different forms, produced by the good moral principles of all, are an evidence, that evil moral principles cannot be made to produce good moral effects by the force of form or artificial arrangement; it would be as possible, that a less mechanical power should control a greater.

A theory of hypothesis, cannot pretend even to plausibility, unless it is deduced from some general law of nature. One which sets out upon the foundation of hereditary orders or alienable exclusive privileges, violates the law, which has determined that talents shall not be inheritable, nor merit transferable. . . .

A political equality of rights among men, on the other hand, is founded in a general law of nature; and yet even this simple and natural system is declared to be unattainable, by those who contend for the possibility of a political equality of rights among orders. That which they assert cannot be effected between two individuals, though it naturally exists, is proposed to be accomplished between orders, composed of multitudes.

The ingredients of Mr. Adams's theory, consist of an equality or balance of property, power and understanding, between orders comprising a nation. And yet all the disciples of the theory, will exclaim against the mischief, folly and impossibility, of levelling or balancing property among individuals.

I agree with them in a disapprobation of levelling property by

law; but the difference between us is, that I object to the levelling principle itself, whilst they approve of its application to effect their theory. I contend that the folly and mischief of enriching orders, such as the feudal and the paper, at the expense of a nation, is at least equal to that of levelling property among individuals; and that the impossibility of maintaining the equality they approve, is as great as that of maintaining the equality they condemn. . . .

[408] The more power is condensed, the more pernicious it becomes. Divided only into three departments, such as king, lords and commons, it can easily coalesce, plunder and oppress. The more it is divided, the farther it recedes from the class of evil moral beings. By a vast number of divisions, applied to that portion of power, bestowed on their governments by the people of the United States; and by retaining in their own hands a great portion unbestowed, with a power of controlling the portion given; the coalescence of political power, always fatal to civil liberty, is obstructed. Small dividends are not as liable to ambition and avarice, as great dividends. Self interest can only be controlled by keeping out of its hands the arms with which it has universally enslaved the general interest. But it universally gets these arms by persuading mankind, that the danger is imaginary, and the remedy useless; and hierarchy, feudality, hereditary orders, mercenary armies, funding and banking, have successively inflicted upon them the expiations of an opinion so absurd.

Nature, says Mr. Adams, suggests, nay dictates, the system of three orders. As to the United States, he satisfies this natural law, by legislative, executive and judicial orders; as to England, by king, lords and commons; making judicial power a natural order here, but not in England. The natural right of self government and natural orders cannot associate. Our policy is founded upon one principle; Mr. Adams's upon the other; and a defence of his, cannot be a defence of the policy of the United States.

By contrasting the division of power resorted to by our policy, with Mr. Adams's idea of a triple division by nature, a wide difference will appear. By our policy, power is first divided between the government and the people, reserving to the people, the control of the dividend allotted to the government. The dividend allotted to the government, is subdivided between its two branches, federal and state. The portion of this subdivision, assigned to the

federal government, is again subdivided between two legislative branches, two executive branches, and two judicial branches; judges and juries; all enjoying specified powers independent of each other. The portion assigned to the state governments, is distributed in quotas still more minute, many of which will be omitted, because of the various modes pursued towards this end, by different states. We find two legislative branches, two executive, and two judicial. A power of such magnitude, as to be relied on for national defence, immediately dependent on the people, and generally removed far from a subserviency to any other division; this is the militia, officered by the people, or by the county courts; trying offenders by its own courts, or holding commissions during good behaviour. Patronage, a formidable power, is divided in a multitude of ways, the chief of which consists of portions exercised by the people, by legislative bodies, and by a variety of inferior courts. Inelegibility is a species of division of power often resorted to. And throughout the whole distribution, our policy, as if on purpose to subvert the hypothesis of a triple natural division of power, has a multitude of instances, invested the same organs with different powers; such as legislative branches, with judicial and executive powers.

As the government is divested by a multitude of divisions, of the ability and inclination to tyrannize; so by the multitude and variety of its elections, our policy cleanses the sovereignty of the people of those defects incident to its aggregate exercise; concluding that power, untempered by division, exercised by nations or their governments, is invariably the scourge of human happiness.

What do we discern in this system of division to justify the hypothesis of three natural orders, or three natural classes of powers? To which of these classes can the division of election be assigned. But if a doubt should remain, let the reader reflect upon the inconsistency between natural powers or orders, and their responsibility. In providing for the responsibility of political power of every complexion, our policy denies the truth of the position, which asserts, that political power is created by nature.

It establishes, with unexampled ingenuity, a double responsibility; of the people to the government, and of the government to the people; the division of election, is the basis of the one, and the division of the powers of government, of the other; by the first, the danger of a physical accumulation of power, and by the

second, the danger of its moral accumulation, is obstructed; to prevent the people from acting in mass against the government, under the impulse of passion; and the government from acting in mass against the people, under the impulse of avarice and ambition. The division of election renders it difficult to turn the people into an ochlocracy; and the division of the powers of government, renders it difficult to turn the public officers into an aristocracy. . . .

[428] . . . Our policy divides power, and unites the nation in one interest; Mr. Adams's divides a nation into several interests, and unites power. By our policy power having been first sparingly bestowed on the government, is next minutely divided, and then bound in the chains of responsibility. . . .

. . . . it would be as wise and prudent to entrust national liberty to the exclusive care of three guardians, all composed of political power, as a bag of money to three thieves. According to Mr. Adams's system, three thieves can never carry off the bag of money, because they can never agree about its division. . . .

Against the oppressions of Mr. Adams's hereditary representatives, nations have no remedy but physical strength; against those of temporary representatives, the moral force of opinion suffices. . . .

[512] Authority is subject to fraud and errour; national judgment, to errour only. Nations have no motive for deceiving or injuring themselves; authority, so many for deceiving or injuring nations, that it seldom or never fails to do both. A nation never knowingly adopts or adheres to an oppressive measure; authority is so entirely addicted to this vice, that it is constantly its original design, or final effort; and the first pretension to the dictatorship it usurps, is an advertisement that it is already a knave, or will finally become a tyrant.

If authority should miraculously possess integrity, it is more liable to capricious errours and absurd prejudices, than national judgment. The wisest man is never free from these humiliations of human vanity, but he can never convince the majority of a nation, that his humours are wise. National opinion shields mankind against the afflictions arising from individual caprice and prejudice, to which authority exposes them; and therefore it is a wiser, besides being an honester standard of truth.

We may without much difficulty discover our own opinion, but

not one in a thousand can possibly know the opinion of the authority in which he confides. . . .

Wherever authority guides a nation or a political party, there cannot be a national or party principle, opinion or measure. It converts nations into the engines of an aspiring individual or a faction, for enslaving themselves; and parties into beasts, to be ridden by a few artful men into office. To this surrender of national and party principles and opinions to authority, is to be superadded, the stupidity of corrupting the object of confidence itself, by assuring it of indiscriminate support. Propelled by this preposterous admonition towards its natural bent, authority very soon abolishes the distinction between principles, parties are converted into mere ladders to power, and election is restricted to the barren right of saying which ladder shall be mounted; so as to produce, not a check, but an excitement of the authority to make the most of present power. Authority moulds men into the same kind of moral beings, whether it is bestowed by a free or an oppressed nation, by a patriotick or a slavish party, because the same moral effects proceed from the same moral causes; and hence, however derived, its apprehensions of the alternation to which it is exposed by election, produce to confiding nations the same misfortunes.

All the truth in the opinion "that knowledge is the best security for liberty," lies within its capacity to detect the fraud of authority, and to retain the contrary principle, self government. Our policy draws the liberty we enjoy from one principle; authority is the source of the present state of other countries. The comparison would at once awaken the credulity, by which nations are induced quietly to put on the yoke of authority, were they not perplexed by its false and constant claims to national gratitude. . . .

[549] . . . Parties are unwarily admitted to be natural and wholesome to republicks, though republicks are constantly destroyed by parties. Without the debasements of confidence, and the frauds of authority, their existence would be seldom felt, and the slavery they draw upon nations, would be never suffered.

If men will plant liberty in individual imperfection and mutability, instead of planting it in the permanency and perfection of principles, it must perish. The tools of patriots frequently become the authors of more evils, than the slaves of tyrants. A republican

government cannot live upon a monarchical diet. Free governments are destroyed by confidence and authority. Can a more dangerous habit befal the people or parties of the United States, than one which is the constant prelude of slavery? . . .

[562] Poverty is justly exasperated against the wealth which caused it; but it temperately contemplates wealth, flowing from industry and talents, and not from fraudulent laws. It knows that as one man's industry, cannot make another man poorer; so wealth gotten by legal means, without industry, must. And if aristocracy is introduced into the United States by legal modes of dividing property, violent animosities between the rich and poor will attend it, to a greater extent than in other countries, because the means for controlling them are less.

From the legal frauds by which property is transferred and amassed, human nature has derived most of its envy, malice, and hatred. And if the acquisitions of hierarchy, privilege, patronage, sinecure, bribery, charter and paper stock, have been but seldom able to inspire it with a sufficient share of these passions, to assail fraudulent kinds of property; what danger can be apprehended by genuine private property, defended by all the sanctions which defend the spurious, with the addition of justice. . . .

To the indignation inspired by the fraudulent legal modes for acquiring wealth, mankind are indebted for the pernicious and impracticable idea of equalising property by law. This speculation has been considered by philosophers, in contrast with its opposite. It seemed to them more reasonable and just, that property should be made equal, than unequal, by law. Destroy the alternative, by assailing both its branches with the benefits arising from leaving property to be distributed by industry, and the argument would assume a new aspect. It would be discovered, that arts and sciences, peace and plenty, have never been found, disunited from metes and bounds. And that hence mankind have preferred that branch of the alternative which required, to that which rejected them; considering a system of property, compounded of honesty and fraud, as preferable to its abolition.

[568] The United States exhibit four parties, the republican, monarchical, stock, and patronage. The two parties of principle, unsophisticated by the parties of separate interest, would discuss with moderation, and decide with integrity; but the two last, accepted on both sides as recruits, by an ardour for victory, though

known to be allies who serve for plunder, empoison them by all the contaminations of an interest, distinct from the publick; and by all the animosities, aristocracies of interest inspire. Aristocracy or separate interest in our case, at present takes refuge under one and then under the other of our parties, because it is not yet able to stand alone; but whilst it is fondling first one and then the other of its nurses, it is sucking both into a consumption, and itself towards maturity. . . .

As a separate or aristocratical interest, is the cause of party in countries where avarice or reason prevails over superstition and fanaticism, it follows, that instead of party spirit being natural to free governments, it is only natural to those, where aristocracies or parties of interest are artificially created and combined by law; and that by uncreating these causes, such aristocracies and parties naturally die. . . .

[570] Orders enslave nations, by making parties; and they are enabled to make them, by laws for transferring property. If such laws make parties, and if the party spirit of orders, is the cause of their oppression; then, though titles are excluded, yet wherever party spirit is created, the oppression produced by orders is secured. Partrician and feudal parties were made by conquered lands; church parties by tythes, offerings and endowments; military parties, by wages; patronage parties, by offices, bribes and sinecures; and paper parties, by stock, interest and dividends. All were made by laws for transferring or invading private property, all are parties or aristocracies of interest, and all are avoided by forbearing to make the laws which make them, and in no other way. . . .

The Cincinnati of the United States could never form a faction or party; because title, without fraudulent laws to transfer property, is incompetent to such an end; but the funding and banking system could; because such laws without title, possess this competency. Even at home we have already learnt, that titles cannot make parties; that laws for distributing property can; and that such laws operate under our political system as they do under all others.

The precise principle we are contending for, is resorted to by the constitution of the United States, to prevent party and faction. But it is applied only to states, and not to individuals. Partialities by law, for increasing or diminishing the taxes of a state, and every

species of exclusive privilege, or exclusive burden, between states, is carefully guarded against. This is done, because laws of either complexion, would unexceptionally transfer property from the unfavoured to the favoured states; and would unexceptionably also create the former into an exasperated, and the latter, into a fraudulent party, or an aristocracy. . . .

[654] The danger of parties to free governments, arises from the impossibility of controlling them by the restraints of political law; because being constituted upon selfish views, like a set of mountabanks combined to administer drugs for the sake of getting fees, the nature of the poison cannot be foreseen, nor an effectual antidote anticipated. No division of power, no responsibility, no periodical change of leaders, no limitation of "thus far you may go and no farther," stops their career. In every form, therefore, they constitute the same avaricious or furious species of aristocracy, which would be produced by a form of government in the hands of a self constituted and uncontrolled body of men. They are universally disposed to persecute, plunder, oppress and kill, like all governments unsubjected to political law; and under the title of patriots, are, like fanaticks under the title of saints, ready to perpetrate any crimes to gratify their interests or prejudices. . . . No numerical checks or balances can reach this dreadful party tyranny. It is even able to suspend or destroy those solemnly established by nations, and to make the people themselves the authors of their own ruin. A political analysis alone, composed of moral principles, can reach and tame a beast, from which men flee to monarchy, because it lays waste and devours their rights with a thousand hands and a thousand mouths. This can test party legislation and actions. But freed from the rigid control of good moral principles, the professions of parties are like the flattering sunshine of the morning, and their acts like an evening deluge. In legislation contrary to genuine republican principles, sustained by a dominant party zeal, lies, in my view, the greatest danger to the free form of government of the United States; nor can I conceive any augmentation of the danger, equivalent to an exercise of the power of distributing wealth by law. If, therefore, these essays should only prove, that it is the office of a republican government to protect, but not to bestow property, they may protract the period during which our government may remain the servant of the nation. For as worldly omnipotence is annexed to a power of

dealing out wealth and poverty, nations are universally retributed for the folly and impiety of submitting to this species of human providence, by a divine decree, that it shall unexceptionably convert these servants into masters and tyrants.

NEW VIEWS OF THE CONSTITUTION OF THE UNITED STATES [1]

1823

During the whole of an unusually long political career Taylor was an ardent advocate of decentralized government. His last book, from which this selection is taken, was devoted primarily to defending the theory of state sovereignty.

[17] On the 29th of May, 1787, the convention was organized, and Mr. Randolph, of Virginia, offered sundry resolutions resuming the word national, though it had been rejected by all of the states, and proposing "that a *national* legislature shall have the right to legislate in all cases in which the harmony of the United States may be interrupted by the exercise of *individual legislation, and to negative all laws passed by the several states, contravening, in the opinion of the national legislature, the articles of the union,* or any treaty under the union." The resolutions also proposed "a *national* executive and a *national* judiciary; that the executive and a convenient number of the *national* judiciary, ought to compose a council of revision, with authority to examine every act of the national legislature, before it shall operate, and every act of a *particular legislature,* before a negative thereon shall be final; and that the dissent of the said council shall amount to a *rejection,* unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by of the members of each branch."

It is worthy of particular observation, that in this project, the constructive supremacy now claimed for the federal government "*over the articles of the union,*" was proposed to be given to a national government; because the actual consideration of this identical power, and its absence from the constitution as it was finally adopted, seems to be irresistible evidence that it does not

[1] Washington City: Way and Gideon. 1823.

exist. Throughout Mr. Randolph's resolutions, fifteen in number, the word national is adopted and the word Congress rejected, except in reference to the Congress under the confederation of 1777, proving that the word was applicable to a federal union, but not to a national government.

The proposed national form of government was ultimately renounced or rejected, but the negative power over state laws with which it was invested, was much less objectionable than that now constructively contended for on behalf of the federal government. The president was to be one of a council of revision, and the influence of the states in his election might have afforded to them some feeble security, a little better than could be expected from a council of revision composed of a few federal judges. Both the legislative branches which were to pronounce the first veto upon state laws, were also to be exposed to popular influence, and might feel all the responsibility of which a body of men are susceptible in extending its own power by its own vote. A judicial veto, as now contended for, is exposed to no responsibility whatever. The council of revision, with the president at its head, were only to be controlled by more than a majority of the national legislature. This was evidently a better security for the small states, than a power in a majority of Congress to abrogate state laws. But all these alleviations of the power in a national form of government to negative state laws, were unsuccessful, because the principle itself, however modified, was inconsistent with the federal form adopted. It can never be conceived that the principle of a negative over state laws, audibly proposed and rejected, had silently crept into the constitution. This was quite consistent with the national form proposed but quite inconsistent with the federal form adopted. The project for a national form of government was deduced from the doctrine, as we shall hereafter see, that the declaration of independence had committed the gross blunder of making the states dependent corporations; that it was in fact a declaration of dependence. When this doctrine failed in the convention, the national negative over state laws died with it. Revived by construction, it assumes a far more formidable and consolidating aspect than as it was originally offered, because the usurped negative over state laws, by a majority of a court or of Congress, would not have its malignity to the states alleviated by the checks to which the project itself resorted. Without

these checks, even the advocates for a national form of government thought such a negative intolerable. The project contemplated a mixed legislative, executive, and judicial supremacy over state laws, so that one department of this sovereignty like that of the English, might check the other, in construing "the articles of the union," and did not venture even to propose, that a government should be established, in which a single court, was to be invested with a supreme power over these articles, or the constitution. The idea seems to be a political monster never seen in fable or in fact. . . .

[22] The word supreme is used twice in the constitution, once in reference to the superiority of the highest federal court over the inferior federal courts, and again in declaring "that the constitution, and laws made in pursuance thereof, shall be the supreme law of the land, and the judges in every state shall be bound thereby." Did it mean to create two supremacies, one in the court, and another in the constitution? Are they collateral, or is one superior to the other? Is the court supreme over the constitution, or the constitution supreme over the court? Are "the judges in every state" to obey the *articles of union*, or the construction of these articles by the supreme federal court? . . . .

[23] The supremacy of the constitution is an admonition to all departments, both state and federal, that they were bound to obey the restrictions it imposes. In relation to the federal government, it literally declares that its laws must conform to its exclusive and concurrent powers; and in relation to the state governments, it implies, that theirs must also conform to their exclusive and concurrent powers. It neither enlarges nor abridges the powers delegated or reserved. And it is enforced, not by an oath to be faithful to the supreme constructions of the federal departments, but by an oath to be faithful to the supremacy of the constitution. . . .

[37] . . . In the creation of the federal government, the states exercised the highest act of sovereignty, and they may, if they please, repeat the proof of their sovereignty, by its annihilation. But the union possesses no innate sovereignty, like the states; it was not self-constituted; it is conventional, and of course subordinate to the sovereignties by which it was formed. . . .

[146] In No. 80 of the Federalist, Mr. Hamilton observes, "If there are any such things as political axioms, the propriety of the

judicial power of a government being co-extensive with its legislative, may be ranked among the number." To sustain the axiom, the rights of legislating and judging must be co-extensive. To whatever objects the right of judging can be extended, to the same objects the right of legislating can go; and if the federal judiciary may by judgments regulate the powers of the state and federal governments, the federal legislature may by laws regulate the same powers. If it is true, that judicial power emanates from legislative, the converse of the proposition would be false. Both axioms would be destroyed if there was no judiciary to execute the laws, or no laws to be executed. As the judicial flows from the legislative power, it would be an inversion of political order, to deduce legislative from judicial power. To avoid an absurdity without example, and in hostility with political axioms, if it can be established that the federal judiciary can regulate the rights of the states by its judgments, it must follow, that the federal legislature may regulate the same rights by its laws. And accordingly the supreme court declares that the federal government may remove all obstacles out of its way. Thus an unlimited national government is ingrafted upon a federal stock, by first cutting away the state branches with the pruning-knife of judicial supremacy. . . .

Mr. Hamilton's axiom establishes a mutual right of control in the state and federal judiciaries, because if the state and federal legislatures can neither extend nor contract the powers delegated and reserved, and if "the judicial power of a government is only co-extensive with the legislative," it follows, that judicial power can neither extend nor contract the powers delegated and reserved, any more than legislative. If the state and federal legislatures may check each other, so may the state and federal judiciaries. The mutual control of the collateral legislatures, would be rendered abortive, unattended by a mutual control of the collateral judiciaries, which must execute the laws of their respective legislatures, or these laws would not operate. It is admitted on all hands, that judges, state and federal, ought not to execute an unconstitutional law. This doctrine is founded upon the supremacy of the constitution over the laws, and is the source of the mutual control between all departments. The axiom declares that the judicial power of a government is co-extensive with the legislative. The legislature cannot enforce unconstitutional laws. If judicial

power can pronounce and enforce unconstitutional judgments, it would exceed legislative beyond computation. The same supremacy of the constitution, and the same reasoning which justifies judicial power with refusal to obey an unconstitutional law, justifies also a state judiciary in refusing to obey an unconstitutional federal judgment; and there is no mode by which unconstitutional laws and judgments can be prevented, except the mutual control between the state and federal departments contended for by Mr. Hamilton, which cannot exist unless it extends to the spherical judiciaries, as well as to the spherical legislatures. . . .

[151] The supreme court was not intrusted with the trial of impeachments, as was proposed in the convention, because its judgments might deprive individuals of a few political rights; but it is contended that it possesses, constructively, a power to try impeachments of whole states, and to deprive them of political rights, infinitely more important. It was not allowed to disqualify an individual to hold a federal office, one political right, but it is said to be tacitly authorized to deprive all the individuals of the United States, of reserved constitutional rights without any restriction. It was not intrusted with a power to deprive the descendants of a guilty individual of any political rights whatsoever; but, say the consolidators, it may deprive all the descendants of the present generation of political rights, by its precedents. . . .

[238] . . . The geography of our country and the character of our people, unite to demonstrate that the ignorance and partiality of a concentrated form of government, can only be enforced by armies; and the peculiar ability of the states to resist, promises that resistance would be violent; so that a national government must either be precarious or despotick. By dividing power between the federal and state governments, local partialities and oppressions, the common causes of revolution, are obliterated from our system.

. . . . Communities possessed of sufficient knowledge to discriminate between liberty and slavery, have uniformly laboured to invest governments with a portion of power sufficient to secure social happiness, but insufficient for its destruction. The United States understood the discrimination, and in the formation of the federal government endeavoured, by limitations and prohibitions, to reserve and secure as many of their individual rights as might

be retained without defeating the end of providing for their common interest. The two principles of a division or a concentration of power, are the adversaries contending for preference. Every government must be of one or the other description. An absolute supremacy in one, belongs to the concentrating principle, like an absolute supremacy in one man. Hence it has happened that an aristocratical or representative body of men, exercising supreme power, has been as tyrannical, or more so, than a single despot. The United States saw that any geographical interest, if invested with supremacy by the establishment of a consolidated national government, would oppress some other geographical interest; and made a new effort to avoid this natural malignity of a concentrated supreme power, though lodged in the representatives of the people. . . .

[241] Against this beautiful theory, an appetite for power in all ages, urges the same objection. It uniformly asserts that divisions of power obstruct, paralyze, or defeat, the splendid actions to be expected from a concentrated supremacy. Before this argument can have any force, it ought to be settled, whether the achievements of concentrated power are good or bad things; since, according to the determination of this fact the argument becomes an object to the principle of dividing power, or its recommendation. Will this principle defeat most good or bad measures? Its value should be ascertained, not by a partial exhibition of good measures it may have obstructed, but by its general tendency to prevent oppression. The fact, that mankind have suffered the sorest evils from a supreme concentrated power, is undoubtedly well established; and it is equally a fact that no remedy against these universal calamities, has ever been suggested, except divisions of power. All writers in favour of a free government, have opposed this, as a good principle, against concentrated power, as a bad one; and although exceptions to its good effects do occasionally occur, as well as exceptions to the bad effects of a concentrated power, yet these exceptions do not constitute the general character of either principles. . . .

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CHAPTER VI

THE GROWTH OF CONSTITUTIONAL DEMOCRACY

INTRODUCTION

Since 1787 there has been no national constitutional convention by which the changing political ideas of the American people could be gauged. There have been scores of conventions in the states. And although the convention of 1787 is one of exceptional importance in the history of American political theory it gives us only a picture of the ideas held by the politically experienced, the wealthy, and the well educated. In the state conventions, particularly those of the nineteenth century, practically all shades of experience, wealth, and education are represented. Unfortunately the earlier conventions kept no record except a brief and relatively unsatisfactory journal of proceedings. But, after about 1815, records of the debates were kept and printed by most of the conventions. These debates afford much the best single source of our information as to the general currents of American political thought. They do not give an adequate reflection of all important controversies, those over slavery and state rights for example, but they do afford an unusually good picture of the way in which traditional American doctrines were being adapted to fit the needs and desires of a changing society.

Some of these convention debates make rather dull reading in comparison with many earlier writings or with the contemporary books and orations on slavery and state sovereignty. But their lack of literary or philosophic appeal is not indicative of unimportance. Frequently the speeches of greatest intellectual interest in the conventions, those for example of Story and Webster in Massachusetts, of Kent in New York, and of John Randolph in Virginia, were but un-

availing attempts by the older and more conservative generation to keep back the on-coming tide of extreme democracy. On the other hand, many of the most tiresome speeches made by the least distinguished of speakers reflect very accurately the generally accepted theories of the time. Here as elsewhere quality of argument had little to do with success in obtaining votes.

A very large proportion of the time and effort of these conventions was devoted to problems connected with the suffrage. Qualifications for voting and for office holding, apportionment of legislative representatives among the districts of the state, and the proper functions of the electorate were storm centers in most of the conventions. It was during this period that the property qualifications found to some extent in all of the Revolutionary state constitutions were removed and the task of the voter made much more difficult by the great increase in the number of elective offices.

Of recent years the emphasis upon the influence of the frontier in American history has resulted in a widely accepted belief that democratic ideas were originated, or at least brought to maturity in the west, and subsequently adopted in the east. To the contrary, the theory of democracy was much earlier worked out in the older civilization. The frontiersmen, when they dealt with the theory of politics at all, were merely repeating certain aspects of the political thought of the older sections. It was in the application of the more extreme forms of these democratic principles that the western states frequently, although not always by any means, led the way. The prescriptive title of the well established institutions in the original group of states made it far more difficult to adopt constitutional provisions embodying the doctrines implicit in their bills of rights than was the case in the states where a first constitution was being formed or where a system in existence only a few years was being amended.

DEBATES IN THE NEW YORK CONSTITUTIONAL CONVENTION OF 1821 [1]

One of the most interesting debates in the New York Convention of 1821 had to do with the election of state senators. The conservative members of the convention, having been defeated on the question of the suffrage qualifications for the lower house of the legislature, were particularly anxious to secure the senate as a representative and protector of the landed class. Fear of the rapidly increasing landless population of New York City was an important factor in the development of this protective theory. However, the principle of majority rule was gaining so rapidly and had so many adherents among the members of the Convention that the theory of the function of the senate which met with general approval in the Federal Convention of 1787 had relatively little support from these representatives of a newer generation.

[219] Chancellor Kent. This state has existed for forty-four years under our present constitution, which was formed by those illustrious sages and patriots who adorned the revolution. It has wonderfully fulfilled all the great ends of civil government. During that long period, we have enjoyed in an eminent degree, the blessings of civil and religious liberty. We have had our lives, our privileges, and our property protected. We have had a succession of wise and temperate legislatures. The code of our statute law has been again and again revised and corrected, and it may bear a comparison with that of any other people. We have had, during that period, (though I am, perhaps, not the fittest person to say it) a regular, stable, honest, and enlightened administration of justice. All the peaceable pursuits of industry, and all the important interests of education and science, have been fostered and encouraged. We have trebled our numbers within the last twenty-five years, have displayed mighty resources, and have made unexampled progress in the career of prosperity and greatness.

Our financial credit stands at an enviable height; and we are now successfully engaged in connecting the great lakes with the ocean by stupendous canals, which excite the admiration of our neighbours, and will make a conspicuous figure even upon the map of the United States.

These are some of the fruits of our present government; and yet we seem to be dissatisfied with our condition, and we are engaged

[1] *Reports of the Proceedings and Debates of the Convention of 1821. . . .* Edited by N. H. Carter, W. L. Stone, and M. T. C. Gould. Albany, 1821.

in the bold and hazardous experiment of remoddelling the constitution. Is it not fit and discreet: I speak as to wise men; is it not fit and proper that we should pause in our career, and reflect well on the immensity of the innovation in contemplation? Discontent in the midst of so much prosperity, and with such abundant means of happiness, looks like ingratitude, and as if we were disposed to arraign the goodness of Providence. Do we not expose ourselves to the danger of being deprived of the blessings we have enjoyed?—When the husbandman has gathered in his harvest, and has filled his barns and his graneries with the fruits of his industry, if he should then become discontented and unthankful, would he not have reason to apprehend, that the Lord of the harvest might come in his wrath, and with his lightning destroy them?

The senate has hitherto been elected by the farmers of the state—by the free and independent lords of the soil, worth at least $250 in freehold estate, over and above all debts charged thereon. The governor has been chosen by the same electors, and we have hitherto elected citizens of elevated rank and character. Our assembly has been chosen by freeholders, possessing a freehold of the value of $50, or by persons renting a tenement of the yearly value of $5, and who have been rated and actually paid taxes to the state. By the report before us, we propose to annihilate, at one stroke, all those property distinctions and to bow before the idol of universal suffrage. That extreme democratic principle, when applied to the legislative and executive departments of government, has been regarded with terror, by the wise men of every age, because in every European republic, ancient and modern, in which it has been tried, it has terminated disastrously, and been productive of corruption, injustice, violence, and tyranny. And dare we flatter ourselves that we are a peculiar people, who can run the career of history, exempted from the passions which have disturbed and corrupted the rest of mankind? If we are like other races of men, with similar follies and vices, then I greatly fear that our posterity will have reason to deplore in sackcloth and ashes, the delusion of the day. . . .

Now, sir, I wish to preserve our senate as the representative of the landed interest. I wish those who have an interest in the soil, to retain the exclusive possession of a branch in the legislature, as a strong hold in which they may find safety through all the vicissitudes which the state may be destined, in the course of

Providence, to experience. I wish them to be always enabled to say that their freeholds cannot be taxed without their consent. The men of no property, together with the crowds of dependants connected with great manufacturing and commercial establishments, and the motley and undefinable population of crowded ports, may, perhaps, at some future day, under skilful management, predominate in the assembly, and yet we should be perfectly safe if no laws could pass without the free consent of the owners of the soil. That security we at present enjoy; and it is that security which I wish to retain.

The apprehended danger from the experiment of universal suffrage applied to the whole legislative department, is no dream of the imagination. It is too mighty an excitement for the moral constitution of men to endure. The tendency of universal suffrage, is to jeopardize the rights of property, and the principles of liberty. There is a constant tendency in human society, and the history of every age proves it; there is a tendency in the poor to covet and share to the plunder of the rich; in the debtor to relax or avoid the obligation of contracts; in the majority to tyranize over the minority, and trample down their rights; in the indolent and profligate, to cast the whole burthens of society upon the industrious and the virtuous; and *there is a tendency in ambitious and wicked men, to inflame these combustible materials.* It requires a vigilant government, and a firm administration of justice, to counteract that tendency. Thou shalt not covet; thou shalt not steal; are divine injunctions induced by this miserable depravity of our nature. Who can undertake to calculate with any precision, how many millions of people, this great state will contain in the course of this and the next century, and who can estimate the future extent and magnitude of our commercial ports? The disproportion between the men of property, and the men of no property, will be in every society in a ratio to its commerce, wealth, and population. We are no longer to remain plain and simple republics of farmers, like the New-England colonists, or the Dutch settlements on the Hudson. We are fast becoming a great nation, with great commerce, manufactures, population, wealth, luxuries, and with the vices and miseries that they engender. One seventh of the population of the city of Paris at this day subsists on charity, and one third of the inhabitants of that city die in the hospitals; what would become of such a city with universal suffrage? France

has upwards of four, and England upwards of five millions of manufacturing and commercial labourers without property. Could these kingdoms sustain the weight of universal suffrage? The radicals in England, with the force of that mighty engine, would at once sweep away the property, the laws, and the liberties of that island like a deluge.

The growth of the city of New-York is enough to startle and awaken those who are pursuing the *ignis fatuus* of universal suffrage. . . .

It is rapidly swelling into the unwieldly population, and with the burdensome pauperism, of an European metropolis. New-York is destined to become the future London of America; and in less than a century, that city, with the operation of universal suffrage, and under skilful direction, will govern this state.

The notion that every man that works a day on the road, or serves an idle hour in the militia, is entitled as of right to an equal participation in the whole power of the government, is most unreasonable, and has no foundation in justice. We had better at once discard from the report such a nominal test of merit. If such persons have an equal share in one branch of the legislature, it is surely as much as they can in justice or policy demand. Society is an association for the protection of property as well as of life, and the individual who contributes only one cent to the common stock, ought not to have the same power and influence in directing the property concerns of the partnership, as he who contributes his thousands. He will not have the same inducements to care, and diligence, and fidelity. His inducements and his temptation would be to divide the whole capital upon the principles of an agrarian law.

Liberty, rightly understood, is an inestimable blessing, but liberty without wisdom, and without justice, is no better than wild and savage licentiousness. The danger which we have hereafter to apprehend, is not the want, but the abuse, of liberty. We have to apprehend the oppression of minorities, and a disposition to encroach on private right—to disturb chartered privileges—and to weaken, degrade, and overawe the administration of justice; we have to apprehend the establishment of unequal, and consequently, unjust systems of taxation, and all the mischiefs of a crude and mutable legislation. A stable senate, exempt from the influence of universal suffrage, will powerfully check these dan-

gerous propensities, and such a check becomes the more necessary, since this Convention has already determined to withdraw the watchful eye of the judicial department from the passage of laws. . . .

[223] General Root. But why must the two branches of the legislature be composed of different genius and heterogeneous materials? To constitute a sufficient check, says the gentleman:—and so, for this purpose, it must consist of discordant elements! Is this the way that government should be constituted? That the different branches, instead of harmonious movement, should be set in hostile array against each other? The honourable gentleman has adverted to the case of an individual employing two agents for the transaction of his business. Sir, I want no better example to illustrate my views of the subject, and to deduce a consequence directly the reverse of that which he has drawn. Were I that individual, I would choose men who might act in unison, and counsel each other upon the subject matter of their agency. If they possessed different tempers—opposite opinions, and hostile feelings, could I expect that the agency would be well managed?—Would not my interests be lost sight of, in their distractions and animosities? What government ever sent two ministers to negociate a treaty, and selected them for their known hostility to each other?

I agree that in a monarchical government, where little liberty is left to the people, it is necessary to have such checks as gentlemen have described. In such governments there are different *orders*, as lords and commons in England; different *estates*, as in the diets of Sweden, Denmark, and Germany. But the necessity in those governments bears no analogy to ours.—We have no different estates, having different interests, necessary to be guarded from encroachment by the watchful eye of jealousy.—We are all of the same estate—all commoners; nor, until we have privileged orders, and aristocratic estates to defend, can this argument apply.

But it is urged that this different genius of the senate is necessary to protect the landed interest:—to prevent the mob, the rabble, or the *radicals*, as they would be called in England, from laying a tax on the lands of the rich, and not on their own—when gentlemen say they have got none! This argument destroys itself. . . .

Mr. P. R. Livingston. He was well persuaded, that every member of the convention was a friend to property, and to the landed interest. But he thought that the views of some gentlemen, if adopted, were not calculated to advance the cause of civil liberty.

Allusions had been made to the formation of the constitution under which we live; and what was the first feature in our remonstrance against the usurpations of Britain? Was it not that taxation and representation were reciprocal; and that no imposition could be laid upon us without our consent? Was it the paltry tax on tea that led to the revolution? No, sir; it was the *principle*, for which we contended: and the same principle, in my judgment, requires a rejection of the proposition now on your table. But we are asked, what evidence we have that people want this extension of suffrage? Sir, 74,000 witnesses testified, last spring, that they wanted it. Meetings and resolutions, public prints, and conversation have united to require it.

It is concluded, however, that the measure proposed by the original amendment jeopardizes the landed interest. Sir, it is the landed interest, in common with others, that have demanded this measure at our hands: and will they resort to projects which are calculated to injure ourselves? France has been alluded to. The French revolution, sir, has produced incalculable blessings to that country. Before that revolution one third of the property of the kingdom was in the hands of the clergy; the rest in the hands of the nobility. Where the interest of one individual has been sacrificed, the interests of thousands have been promoted. After dining with that friend of universal liberty, the patriotic La Fayette, he once invited me to walk upon the top of his house, that commanded a view of all the surrounding country. Before the revolution, said he, all the farms and hamlets you can see were mine. I am now reduced to a thousand acres, and I exult in the diminution, since the happiness of others is promoted by participation.

This, sir, is the language of true patriotism; the language of one whose heart, larger than his possessions, embraced the whole family of man in the circuit of its beneficence. And shall we, with less ample domains refuse to our poorer neighbours the common privileges of freemen?

But, sir, we are told and warned of the rotton boroughs of England. By whom are they owned? By men of wealth. They

confer the right of representation on the few, to the exclusion of the many. They are always found in the views of the monarch; and while aristocracy is supported by the house of lords, the house of commons is borne down by the boroughs.

It is said that wealth builds our churches, establishes our schools, endows our colleges, and erects our hospitals. But have these institutions been raised without the hand of labour? No, sir; and it is the same hand that has levelled the sturdy oak, the lofty pine, and the towering hemlock, and subdued your forests to a garden. It is not the fact, in this country, that money controls labour; but labour controls money. When the farmer cradles his wheat and harvests his hay, he does not find the labourer on his knees before him at the close of the day, solicitous for further employment; but it is the farmer who takes off his hat, pays him his wages, and requests his return on the morrow.

Apprehensions are professed to be entertained, that the merchant and manufacturer will combine to the prejudice of the landed interest. But is not agriculture the legitimate support of both? And do gentlemen really suppose that they will madly combine to destroy themselves? If the title to land contributed to the elevation of the mind, or if it gave stability to independence, or added wisdom to virtue, there might be good reason for proportioning the right of suffrage to the acres of soil. But experience has shewn that property forms not the scale of worth, and that character does not spring from the ground. It seems, indeed, to be thought, that poverty and vice are identified. But look to the higher classes of society. Do you not often discover the grossest abuse of wealth? Look to the republics of Greece. They were all destroyed by the wealth of the aristocracy bearing down the people.

And how were the victories of Greece achieved in her better days? By the militia. How were the liberties of Rome sustained? By her militia. How were they lost? By her standing armies. How have we been carried triumphantly through two wars? By the militia—by the very men whom it is now sought to deprive of the inestimable privilege of freemen. And whom do you find in your armies in time of war? The miser? The monied Shylock? The speculator? No, sir; it is the poor and hardy soldier who spills his blood in defence of his country; the veteran to whom you allow the privilege to fight, but not to vote. If there is value

in the right of suffrage, or reliance to be placed upon our fellow citizens in time of war, where, I ask, is the justice of withholding that right in times of peace and safety? . . .

[235] Mr. Cramer. I had supposed that the great fundamental principle, that all men were equal in their rights, was settled, and forever settled, in this country. I had supposed, sir, that there was some meaning in those words, and some importance in the benefits resulting from them. I had supposed from the blood and treasure which its attainment had cost, that there was something invaluable in it: and that in pursuance of this principle it ought to be the invariable object of the framers of our civil compact, to render all men equal in their political enjoyments as far as could be, consistent with order and justice. But, sir, this, the honourable gentleman from Albany, for whose opinion on such subjects, I have entertained a profound respect, and who has presented the amendment now under consideration, has informed us with great assurance and emphasis, is a most egregious mistake, and that in it consists the very essence of aristocracy. However, he has the charity to suppose that the mistake arose in the committee of which I had the honour of being a member, and who presented the report on your table, not from design, but from ignorance, and that a careful examination of proper authorities, on this subject, would convince any person of the correctness of his position; and as a lawyer and a distinguished jurist, he has referred us to certain authorities which I shall endeavour to examine as to their bearing on the subject under discussion, in the same order in which they were presented. . . . No, sir, privileged orders and a landed aristocracy, the natural effects of a monarchical government, are and ever have been, the order of the day; thus much, for the authorities of the gentleman; and in turn I would refer him, and this committee, to a few plain, practical, modern commentators on the rights of man and on civil government, in our own country: namely, the constitutions of the several states. . . . In fact, but two states in the union, with the exception of this state, have any freehold distinctions as to electors; which are Virginia and North-Carolina; and the constitutions of those states were adopted at an early period of the revolutionary war, when the rights of man were little understood, and the blessings of a free government had not been realized. And when in opposition to these we find that all the different constitutions which have

been formed or amended within the last thirty years, have discarded this odious, this aristocratical, this worse than useless, feature, from their political charts, will any gentleman of this committee say that all this affords no evidence to his mind, of the impropriety of retaining this freehold distinction? To me, it is satisfactory and conclusive. . . .

. . . . But it has been said, that the landed interest of this state, bears more than its equal proportion of the burthens of taxation. This, sir, I deny. All property, real and personal, is equally taxed, and bears its just proportion of the public burthens: but, sir, is not life and liberty dearer than property, and common to all, and entitled to equal protection? No, sir. That gentlemen appeared to be impressed with the idea, that the *turf* is of all things the most sacred, and that for its security, you must have thirty-two grave turf senators from the soil, in that Sanctum Sanctorum, the senate chamber, and then all your rights will be safe. No matter whether they possess intelligence, if they are selected by your rich landowners, all is well.—But it is alledged by gentlemen, who have spoken on that side of the house, that the poor are a degraded class of beings, have no will of their own, and would not exercise this high prerogative with independence and sound discretion if entrusted with it; and, therefore, it would be unwise to trust them with ballots.—This, sir, is unfounded: for more integrity and more patriotism are generally found in the labouring class of the community than in the higher orders. These are the men, who add to the substantial wealth of the nation, in peace. These are the men, who constitute your defence in war. Of such men, consisted your militia, when they met and drove the enemy at Plattsburgh, Sacket's Harbour, Queenston, and Erie; for you found not the rich landholder or speculator in your ranks; and we are told, that these men, because they have no property, are not to be trusted at the ballot boxes! Men, who in defence of their liberties, and to protect the property of this country, have hazarded their lives; and who, to shield your wives and children from savage brutality, have faced the destructive cannon, and breasted the pointed steel? All this they could be trusted to do. They could, without apprehension, be permitted to handle their muskets, bayonets, powder and balls; but, say the gentlemen, it will not answer to trust them with tickets at the ballot boxes. I would admonish gentlemen of this committee, to reflect, who they are

about to exclude from the right of suffrage, if the amendment under consideration should prevail.—They will exclude your honest industrious mechanics, and many farmers, for many there are, who do not own the soil which they till. And what for? Because your farmers wish it? No, sir, they wish no such thing; they wish to see the men who have defended their soil, participate equally with them in the election of their rulers. Nay, now you exclude most of the hoary headed patriots, who achieved your independence, to whom we are indebted for the very ground we stand upon, and for the liberties we enjoy. But for the toil and sufferings of these men, we should not now be here debating as to forms of government. No, sir, the legitimates would soon have disposed of all this business. And why are these men to be excluded? Not because they are not virtuous, not because they are not meritorious; but, sir, because they are poor and dependant, and can have no will of their own, and will vote as the man who feeds them and clothes them may direct, as one of the honourable gentlemen has remarked. I know of no men in this country, who are not dependant. The rich man is as much dependant upon the poor man for his labour, as the poor man is upon the rich for his wages. I know of no men, who are more dependant upon others for their bread and raiment, than the judges of your supreme court are upon the legislature, and who will pretend that this destroys their independence, or makes them subservient to the views of the legislature. Let us not, sir, disgrace ourselves in the eyes of the world, by expressing such degrading opinions of our fellow citizens. Let us grant universal suffrage, for after all, it is upon the virtue and intelligence of the people that the stability of your government must rest. Let us not brand this constitution with any odious distinctions as to property, and let it not be said of us as has been truly said of most republics, that we have been ungrateful to our best benefactors. . . .

DEBATES IN THE VIRGINIA CONSTITUTIONAL CONVENTION OF 1829–30 [1]

Probably the most interesting American constitutional convention of the nineteenth century was this one in Virginia. Certainly there have been few conventions which brought together such a notable group of men, among them Madison, Marshall, Monroe, and Randolph of the older generation, and Tyler, Upshur, Giles, the Barbours, Leigh, Mercer, and Cooke of the younger. The keenest dispute here, as in so many conventions of the period, was over the broadening of the suffrage and the re-apportionment of representatives in the legislature. The struggle was primarily between the planters of the eastern part of the state and the small farmers of the west, but there was also a strong feeling of dissatisfaction with the existing arrangement on the part of the non-land owning class in several of the eastern cities. In fact they were more concerned about the basis of the suffrage than were many of the westerners who lived where land was cheap enough for most citizens to own an amount sufficient to give them the suffrage. On the other hand, the westerners were more desirous of changing the basis of representation in the legislature since the existing system discriminated against them.

[25] Mr. Marshall of Richmond said, that he was charged with a memorial from a numerous and respectable body of citizens, the non-freeholders of the city of Richmond. The object sought in the memorial, was an extension of the right of suffrage. The language of the memorial was respectful, and the petitioners accompanied their request with such arguments, as to them appeared convincing, in support of the object in view.

The memorial was thereupon received, and read as follows:

The Memorial of the Non-Freeholders of the City of Richmond, respectfully addressed to the Convention, now assembled to deliberate on amendments to the State Constitution:

Your memorialists, as their designation imports, belong to that class of citizens, who, not having the good fortune to possess a certain portion of land, are, for that cause only, debarred from the enjoyment of the right of suffrage. Experience has but too clearly evinced, what indeed, reason had always foretold, by how frail a tenure they hold every other right, who are denied this, the highest prerogative of freemen. The want of it has afforded both the pretext and the means of excluding the entire class, to which your

[1] *Proceedings and Debates of the Virginia State Convention, of 1829–30.* Richmond: Samuel Shepherd & Co. for Ritchie & Cook. 1830.

memorialists belong, from all participation in the recent election of the body, they now respectfully address. Comprising a very large part, probably a majority of male citizens of mature age, they have been passed by, like aliens or slaves, as if destitute of interest, or unworthy of a voice, in measures involving their future political destiny: whilst the freeholders, sole possessors, under the existing Constitution, of the elective franchise, have, upon the strength of that possession alone, asserted and maintained in themselves, the exclusive power of new-modelling the fundamental laws of the State: in other words, have seized upon the sovereign authority.

It cannot be necessary, in addressing the Convention now assembled, to expatiate on the momentous importance of the right of suffrage, or to enumerate the evils consequent upon its unjust limitation. Were there no other than that your memorialists have brought to your attention, and which has made them feel with full force, their degraded condition, well might it justify their best efforts to obtain the great privilege they now seek, as the only effectual method of preventing its recurrence. To that privilege, they respectfully contend, they are entitled equally with its present possessors. Many are bold enough to deny their title. None can show a better. It rests upon no subtle or abstruse reasoning; but upon grounds simple in their character, intelligible to the plainest capacity, and such as appeal to the heart, as well as the understanding, of all who comprehend and duly appreciate the principles of free Government. Among the doctrines inculcated in the great charter handed down to us, as a declaration of the rights pertaining to the good people of Virginia and their posterity, "as the basis and foundation of Government," we are taught,

"That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity: namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

"That all power is vested in, and consequently derived from, the people.

"That a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter or abolish the Government.

"That no man, nor set of men, are entitled to exclusive or separate emoluments or privileges, but in consideration of public services.

"That all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have a right to suffrage, and cannot be taxed, or deprived of their property, without their consent, or that of their representative, nor bound by any law, to which they have not, in like manner, assented, for the public good."

How do the principles thus proclaimed, accord with the existing regulation of suffrage? A regulation, which, instead of the equality nature ordains, creates an odious distinction between members of the same community; robs of all share, in the enactment of the laws, a large portion of the citizens, bound by them, and whose blood and treasure are pledged to maintain them, and vests in a favoured class, not in consideration of their public services, but of their private possessions, the highest of all privileges: one which, as is now in flagrant proof, if it does not constitute, at least is held practically to confer, absolute sovereignty. Let it not be urged, that the regulation complained of and the charter it violates, sprung from the same honored source. The conflict between them is not on that account the less apparent. Nor does it derogate from the fair fame of the Convention of '76, that they should not have framed a Constitution perfect in all its parts. Deliberating amid the din of arms, not merely on a plan of Government, but on the necessary means for conducting a most unequal struggle for national existence, it was not to be expected, that the relative rights of the citizens, could be maturely considered, or adjusted in detail. From any change of the regulation, in regard to suffrage, a subject prolific, always, of much dissention, they might have feared to generate feuds among those, upon whose harmony of feeling and concert of action, depended the salvation of their country. They left it, therefore, as they found it. The non-freeholders, moreover, unrepresented in the Convention, and for the most part, probably, engaged in resisting the common enemy, it is fair to infer, in the actual condition of the country, had neither the opportunity nor the inclination to press their claim. Nor should it be forgotten, that the Convention having been chosen by the freeholders, whose political power was derived from the abrogated Government, many of our wisest

Statesmen regarded the Constitution itself, as wanting in authority, or at least as repealable by a succeeding Legislature: and, accordingly, it has, in point of fact, since undergone a material change, in the very provision now in question, touching the right of suffrage. . . .

Your memorialists do not design to institute a comparison; they fear none that can be fairly made between the privileged and the proscribed classes. They may be permitted, however, without disrespect, to remark, that of the latter, not a few possess land: many, though not proprietors, are yet cultivators of the soil: others are engaged in avocations of a different nature, often as useful, pre-supposing no less integrity, requiring as much intelligence, and as fixed a residence, as agricultural pursuits. Virtue, intelligence, are not among the products of the soil. Attachment to property, often a sordid sentiment, is not to be confounded with the sacred flame of patriotism. The love of country, like that of parents and offspring, is engrafted in our nature. It exists in all climates, among all classes, under every possible form of Government. Riches oftener impair it than poverty. Who has it not is a monster. . . .

But, it is said, yield them this right, and they will abuse it: property, that is, landed property, will be rendered insecure, or at least overburthened, by those who possess it not. The freeholders, on the contrary, can pass no law to the injury of any other class, which will not more injuriously affect themselves. The alarm is sounded too, of danger from large manufacturing institutions, where one corrupt individual may sway the corrupt votes of thousands. It were a vain task to attempt to meet all the flimsy pretexts urged, to allay all the apprehensions felt or feigned by the enemies of a just and liberal policy. The danger of abuse is a dangerous plea. Like *necessity*, the detested plea of the tyrant, or the still more detestible plea of the Jesuit, *expediency;* it serves as an ever-ready apology for all oppression. If we are sincerely republican, we must give our confidence to the principles we profess. We have been taught by our fathers, that all power is vested in, and derived from, the people; not the freeholders: that the majority of the community, in whom abides the physical force, have also the political right of creating and remoulding at will, their civil institutions. Nor can this right be any where more safely deposited. The generality of mankind,

doubtless, desire to become owners of property: left free to reap the fruit of their labours, they will seek to acquire it honestly. It can never be their interest to overburthen, or render precarious, what they themselves desire to enjoy in peace. But should they ever prove as base as the argument supposes, force alone; arms, not votes, could effect their designs; and when that shall be attempted, what virtue is there in Constitutional restrictions, in mere wax and paper, to withstand it? To deny to the great body of the people all share in the Government; on suspicion that they may deprive others of their property, to rob them, in advance of their rights; to look to a privileged order as the fountain and depository of all power; is to depart from the fundamental maxims, to destroy the chief beauty, the characteristic feature, indeed, of Republican Government. Nor is the danger of abuse thereby diminished, but greatly augmented. No community can exist, no representative body be formed, in which some one division of persons or section of country, or some two or more combined, may not preponderate and oppress the rest. The east may be more powerful than the west, the lowlanders than the highlanders, the agricultural than the commercial or manufacturing classes. To give all power, or an undue share, to one, is obviously not to remedy but to insure the evil. Its safest check, its best corrective, is found in a general admission of all upon a footing of equality. So intimately are the interests of each class in society blended and interwoven, so indispensible is justice to all, that oppression in that case becomes less probable from any one, however powerful. Nor is this mere speculation. In our ecclesiastical polity it has been reduced to practice; and the most opposed in doctrine, the most bitter in controversy, have forgotten their angry conflicts for power, and now mingle in harmony. . . .

The right of suffrage, however, it seems, is not a natural right. If by natural, is meant what is just and reasonable, then, nothing is more reasonable than that those whose purses contribute to maintain, whose lives are pledged to defend the country, should participate in all the privileges of citizenship. But say it is not a natural right. Whence did the freeholders derive it? How become its exclusive possessors? Will they arrogantly tell us they own the country, because they hold the land? The right by which they hold their land is not itself a natural right, and by consequence, nothing claimed as incidental to it. Whence then did they derive

this privilege? From grant or conquest? Not from the latter. No war has ever been waged to assert it. If from the former, by whom was it conferred? They cannot, if they would, recur to the Royal Instructions of that English monarch, of infamous memory, who enjoined it upon the Governor of the then Colony of Virginia, "to take care that the members of the Assembly be elected *only by the freeholders*, as being more agreeable to the customs of England:" he might have added more congenial also with monarchical institutions. If Colonial regulations might properly be looked to, then the right, not of freeholders merely, but of *freemen*, to vote, may be traced to a more distant antiquity, and a less polluted source. But, by our ever-glorious revolution, the Government whence these regulations emanated, was annulled, and with it all the political privileges it had conferred, swept away. Will they rely on the Constitutional provision? That was the act of men delegated by themselves. They exercised the very right in question in appointing the body from whom they profess to derive it, and indeed gave to that body all the power it possessed. What is this but to say they generously conferred the privilege upon themselves? Perhaps they may rely on length of time to forestal enquiry. We acknowledge no act of limitations against the oppressed. Or will they disdain to shew any title; and, clinging to power, rest on force, the last argument of Kings, as its source and its defence? This were, doubtless, the more political course.

Let us concede that the right of suffrage is a social right; that it must of necessity be regulated by society. Still the question recurs, is the existing limitation proper? For obvious reasons, by almost universal consent, women and children, aliens and slaves, are excluded. It were useless to discuss the propriety of a rule that scarcely admits of diversity of opinion. What is concurred in by those who constitute the society, the body politic, must be taken to be right. But the exclusion of these classes for reasons peculiarly applicable to them, is no argument for excluding others to whom no one of those reasons applies.

It is said to be *expedient*, however, to exclude non-freeholders also. Who shall judge of this expediency? The society: and does that embrace the proprietors of certain portions of land only? Expedient, for whom? for the freeholders. A harsh appellation would he deserve, who, on the plea of expediency, should take from another his property: what, then, should be said of him who,

on that plea, takes from another his rights, upon which the security, not of his property only, but of his life and liberty depends?

But the non-freeholders are condemned for pursuing an abstract right, whose privation occasions no practical injury.

Your memorialists do not, perhaps, sufficiently comprehend the precise import of this language, so often used. The enjoyment of all other rights, whether of person or property, they will not deny, may be as perfect among those deprived of the privilege of voting, as among those possessing it. It may be as great under a despotism, as under any other form of Government. But they alone deserve to be called free or have a guarantee for their rights, who participate in the formation of their political institutions, and in the control of those who make and administer the laws. To such as may be disposed to surrender this, or any other immunity, to the keeping of others, no practical mischief may ensue from its abandonment; or if any, none that will not be justly merited. Not so with him who feels as a freeman should; who would think for himself and speak what he thinks; who would not commit his conscience or his liberty to the uncontrolled direction of others. To him the privation of right, of that especially, which is the only safeguard of freedom, is practically wrong. So thought the fathers of the republic. It was not the oppressive weight of the taxes imposed by England on America: it was the assertion of a right to impose any burthens whatever upon those who were not represented; to bind by laws those who had no share, personal or delegated, in their enactment, that roused this continent to arms. Have the principles and feelings that then prevailed, perished with the conflict to which they gave birth? If not, are they not now grossly outraged? The question is submitted to your candor and justice. . . .

[31] Mr. Mercer then presented a memorial, which, he said, came from a highly respectable body of citizens in Fairfax county. Its purport and tenor were very similar to that which had just been read; and he moved its reference to the same committee. . . .

[53] On motion of Mr. Doddridge, the Convention proceeded to consider the report of the Committee on the Legislative Department of Government. The report was read at the Clerk's table, and the first section having then been read by the Chairman for amendment, as follows:

"*Resolved*, That in the apportionment of representation in the

House of Delegates, regard should be had to the white population exclusively."

Mr. Green moved to amend it by striking out the word "*exclusively,*" and adding in lieu thereof the words "*and taxation combined.*" . . .

Mr. Leigh of Chesterfield, said, that he did hope that the friends of the proposition reported by the Legislative Committee, would assign their reasons in support of a plan which proposes, in effect, to put the power of controlling the wealth of the State, into hands different from those which hold that wealth; a plan, which declares that representation shall be regulated by one ratio, and contribution by another: that representation shall be founded on the white population alone, and contribution on a ratio double, treble, and quadruple in proportion. He hoped the friends of these new propositions, new at least in our State, if not new throughout the world, would give to those who differed from themselves, some reasons in support of their scheme; some better reasons than that such principles were unknown to our English ancestors, from whom we have derived our institutions; better than the rights of man held in the French school; better than that they were calculated in their nature to lead to rapine, anarchy and bloodshed, and in the end, to military despotism: a scheme, which has respect to numbers alone, and considers property as unworthy of regard. . . .

[54] Mr. John R. Cooke said, that he could not but express his unfeigned astonishment, that the able gentleman from Chesterfield (Mr. Leigh) should have ventured to say to that assembly, that the principle of representation recommended by the Legislative Committee, was "new to him, and new in the history of the world." Can the gentleman have forgotten, (said Mr. Cooke,) that the principle which he treats as a novelty, and an innovation, is asserted in the "Declaration of the Rights of the people of Virginia?" And does he not know, that when the Convention of 1776 promulgated, in that instrument, the principles of Government on which their infant Republic was founded, they did but announce, in solemn form, to the people of Virginia, principles which had received, *a century before*, the deliberate sanction of the most enlightened friends of liberty, throughout the world?

Sir, the fathers of the Revolution did but *reiterate* those great and sacred truths which had been illustrated by the genius of

Locke, and Sydney, and Milton: truths for which Hampden, and a host of his compatriots, had poured out their blood in vain.

Driven from Europe, by Kings, and Priests, and Nobles, those simple truths were received, with favour, by the sturdy yeomanry who dwelt on the western shores of the Atlantic. The love of liberty, aye, Sir, and of *equality* too, grew with the growth, and strengthened with the strength, of the Colonies. It declared war, at last, not only against the *power* of the *King*, but against the *privilege* of the *Noble*, and laid the deep foundations of our Republic on *the sovereignty of the people* and *the equality of men.*

The sacred instrument, for sacred I will dare to call it, not withstanding the sneers which its very name excites in this assembly of *Republicans*, the sacred instrument in which those great principles were declared, was ushered into existence under circumstances the most impressive and solemn. The "Declaration of the Rights of the people of Virginia," was made by an assembly of sages and patriots, who had just involved their country in all the horrors of war, in all the dangers of an unequal contest with the most powerful nation on earth, for the sake of the noble and elevated principles which that instrument announces and declares. For the sake of those principles, they had imperilled their lives, their fortunes, their wives, their children, their country; and, in one word, all that is dear to man. For the sake of those principles, they had spread havoc and desolation over their native land, and consigned to ruin and poverty a whole generation of the people of Virginia.

And for what did they make these mighty sacrifices! For wild "abstractions, and metaphysical subtleties!" No, Sir. For principles of eternal truth; as practical, in character, as they are vital, in importance; for principles deep-seated in the nature of man, by whose development, alone, he can attain the happiness which is the great object of his being. . . .

[56] I say, then, Sir, with a confidence inspired by a deep conviction of the truth of what I advance, that the principles of the *sovereignty of the people*, the *equality of men*, and the *right of the majority*, set forth in the "Declaration of the Rights of the people of Virginia," so far from being "wild and visionary," so far from being "abstractions and metaphysical subtleties," are the very principles which alone give a *distinctive* character to our institutions, are the principles which have had the *practical* effect in Vir-

ginia, of abolishing *kingly power*, and *aristocratic privilege*, substituting for them an elective magistracy, deriving their power *from* the people, and responsible *to* the people. . . .

It was not reserved for *us* to discover the inconsistency between their theoretical principles, and their practical regulations. They saw it themselves, and deplored it. In the very heat of the war which was waged for these "abstractions"—in the hurly-burly of the conflict, *one* statesman, at least, was found, to point out those inconsistencies, and to urge home on the people of Virginia the "new and unheard of" principle, that in the apportionment of representation, regard should be had to the white population only. As early as 1781, Mr. Jefferson exhorted the people of Virginia, in the most earnest and impressive language, to reduce the principle to practice, "so soon as leisure should be afforded them, for intrenching, within good forms, the rights for which they had bled."

From that time to this, the spirit of reform has never slept. From that time to this, the friends of liberty have continually lifted up their voices against the inequality and injustice of our system of Government. Incessantly baffled and defeated, they have not abandoned their purpose; and after a struggle of fifty years, that purpose seems at length on the eve of accomplishment. The Representatives of the people of Virginia have at length assembled in Convention, to revise the Constitution of the State. A special committee of this Convention has recommended, among other measures of reform, the adoption of a resolution,

"That in the apportionment of representation, in the House of Delegates, regard should be had to white population exclusively."

It is this resolution which has called forth the denunciations of the gentleman from Chesterfield. It is this proposition, "new in the history of our Government, if not throughout the world; new certainly to him," which he calls on us to support. . . .

[59] It is alleged, then, Sir, that the principles of Government contained in the Declaration of Rights, I mean those elevated and elevating principles which, in an assembly of *Virginia Statesmen*, I have this day been compelled to defend, are little better than mere abstractions. That whether they are correct or not, as "abstract principles," there is a great *practical* principle, wholly overlooked in the resolution of the Select Committee, of vital and *paramount* importance. The principle in question, and the argu-

ment by which it is sustained, when broadly and fairly developed, amount to this:

1. That the security of property is one of the most essential elements of the prosperity and happiness of a community, and should be sedulously provided for by its institutions.

2. That men naturally love property, and the comforts and advantages it will purchase.

3. That this love of wealth is so strong, that the *poor* are the natural enemies of the *rich*, and feel a strong and habitual inclination to strip them of their wealth, or, at least, to throw on them alone all the burthens of society.

4. That the *poor*, being more *numerous* in every community, than all the classes above them, would have the *power*, as well as the *inclination*, thus to oppress the rich, if admitted to an equal participation with them in political power; and

5. That it is therefore necessary to restrain, limit and diminish the power of this natural majority; of this many-headed and hungry monster, *the many*, by some artificial regulation in *the Constitution, or fundamental law*, of every community. And if this be not done, either directly, by limitations on the right of suffrage, or indirectly, by some artificial distribution of political power, in the apportionment of representation, like that contained in the amendment, property will be invaded, all the multiplied evils of anarchy will ensue, till the society, groaning under the yoke of unbridled democracy, will be driven to prefer to its stormy sway, the despotic Government of a single master. And this is said to be the natural death of the Government of *numbers*.

Sir, if this statement of the argument be a little overcoloured by imputing to those who advance it epithets which they are too prudent to use, it is nevertheless, like all good caricatures, a striking likeness.

To this argument I answer that, like most unsound arguments, it is founded on a bold assumption of false premises. It is founded on the assumption that men are, by nature, *robbers*, and are restrained from incessant invasions of the rights of each other, only by fear or coercion. But, is this a just picture of that compound creature *man*? Sir, I conceive it to be a libel on the race, disproved by every page of its history. If you will look there you will find that man, though sometimes driven by stormy passions to the commission of atrocious crimes, is by nature and habit

neither a wolf nor a tiger. That he is an *affectionate*, a *social*, a *patriotic*, a *conscientious* and a *religious* creature. In him, alone, of all animals, has nature implanted the feeling of *affection for his kindred*, after the attainment of maturity. This alone is a restraint on the excess of his natural desire for property as extensive as the ties of blood that bind him to his fellow man. Designing, moreover, that man shall live in *communities*, where alone he can exist, nature has given to him the *social feeling;* the feeling of attachment to those around him. Intending that for the more perfect development of his high faculties, and for the attainment of the greatest degree of comfort and happiness of which he is susceptible, man should associate in *nations*, she implanted in him a feeling, the glorious displays of which have shed lustre around so many pages of his history. I mean *the love of country or patriotism.* Designing that he should attain to happiness through the practice of virtue, and in that way only, she erected in each man's bosom the tribunal of *conscience*, which passes in review all the actions of the individual, and pronounces sentence of condemnation on every manifest deviation from moral rectitude. To add sanctions to the decisions of conscience, she also implanted in his bosom an intuitive belief in the existence of an intelligence governing the world, who would reward virtue and punish vice in a future state of being. Man is therefore, by nature a *religious* creature, whose conduct is more or less regulated by the love or fear of the unknown governor of the Universe. Above all, the light of revealed religion has shone for ages on the world, and that Divine system of morals which commands us "to do unto others as we would have them do unto us," has shed its benign influence on the hearts of countless thousands, of the high and the low, the wise and the foolish, the *rich* and the *poor*. But we are asked to believe that all these natural feelings, all these social affections, all these monitions of conscience, all these religious impressions, all these Christian charities, all these hopes of future rewards and fears of future punishments, are dead, and silent, and inoperative in the bosom of man. The love of property is the great engrossing passion which swallows up all other passions, and feelings, and principles; and this not in particular cases only, but in all men. The poor man is fatally and inevitably the enemy of the rich, and will wage a war of rapine against him, if once let loose from the restraints of the fundamental law. A doctrine monstrous, hateful and incredible!

But, Sir, if I were even to admit, for a moment, the truth of the revolting proposition that the desire for property swallows up all the other feelings of man, does it follow that the aspirants after the enjoyments that property confers, will seek to attain their object in the manner which the argument in question supposes? If it be contended that man is a greedy and avaricious, it will, still, not be denied, that he is a reasoning and calculating animal. When he desires to *attain* property it is in order that he may *possess and enjoy it*. But if he join in establishing the rule that the right of the strongest is the best right, what security has he that he, in his turn, will not soon be deprived of his property by some one stronger than himself? Sir, the *very* desire for property implies the desire to possess it *securely*. And he who has a strong desire to possess it, and a high relish, in anticipation, of the pleasure of enjoying it securely, will be a firm supporter of the laws which secure that possession, and a decided enemy to every systematic invasion of the rule of *meum* and *tuum*. In other words, man is sagacious enough to know that as a general and public rule of action, the maxim that honesty is the best policy, is the safest and best maxim. And when he deviates from that rule he always hopes that the violation will go undiscovered, or otherwise escape punishment. So true is this, that I am persuaded that if a nation could be found consisting exclusively of rogues and swindlers, there would not be found in the legislative code of that nation a systematic invasion of the right of property, such as the argument for the proposed amendment apprehends and seeks to provide against.

Communities of men are sagacious enough to know and follow their *real* interest. And, Sir, I do not, and cannot believe that it is, or ever was the real interest of any class in the community, or of any community to commit gross and flagrant abuses of power, to disregard the monitions of conscience, to break down the barriers and obliterate the distinctions between right and wrong, and thus to involve society in all the horrors of anarchy. The principles of justice are the foundation of the social fabric, and rash and foolish is he and blind to his true interest, who undermines the foundation and tumbles the fabric in ruins.

Thus far I have reasoned *a priori*. But what are the lessons which history and experience teach us, in pursuing this enquiry?—We need not go far for examples. Let us look at the experience of

our good old Commonwealth of Virginia. From the foundation of the Commonwealth the slave-holding population of Virginia has held the supreme power in the State. From the foundation of the Commonwealth there has existed and there still exists, a numerous population on our western frontier, who are comparatively destitute of slave-property, and whose wealth has ever consisted in cattle more than in any other description of property. Now if the argument of those who support the proposed amendment be a sound one, it would follow that as it is and always has been the interest (according to *their* views of interest) of the slave-holding population to shift from themselves, and to lay on others, the burthens of Government, they would impose heavy taxes on the cattle, the property of the helpless minority, and oppress them by this and every other species of fiscal exaction. And yet the very reverse is the fact. For the slave-holders, invested with supreme power, and urged to its exercise by their "*interest*," have not only not overtaxed the cattle of their western brethren, but have, in fact, imposed on them, except at one period of danger and distress from foreign war, no tax at all, and when the pressure ceased the law imposing the tax was instantly repealed. And why?—Because they were governed by the principles of justice, and the feelings of honour. Because they thought, and justly, that the people of the frontier, burthened as they were with "the first expenses of society," and engaged in laying the very foundations of the social fabric, could ill endure the additional burthen of a tax on their flocks and herds. Because the non-slave holders of the west were at their mercy, and every feeling of honour and magnanimity forbade them to oppress the weak. I say, then, Sir, that the slave-holders of Virginia have shewn by their conduct in this particular case, the incorrectness of the theory which supposes man to be habitually governed by a blind and reckless cupidity; by the sordid feelings alone of his nature, to the exclusion of the nobler.

I say, then, that arguing *a priori*, or taking for our guide the conduct of the slave-holders of Virginia, we are led to the conclusion, that the property of the wealthy would not be imperilled, as gentlemen imagine, by entrusting the powers of Government to *numbers*, without regard to their wealth. That property would be abundantly secure, without investing its holders with a factitious power, derived from its possession. And that there is not the least

necessity for the proposed innovation on the great principles of Government, asserted by our ancestors at the æra of the revolution.

But it is not in Virginia alone, that we see evidences of the futility of the apprehensions that are entertained for the safety of property. We have in the history of our Sister-Commonwealths, a rich fund of experience from whence we can draw arguments to illustrate the utter futility of these apprehensions. In *fifteen States of the Union*, representation is apportioned according to numbers alone, and wholly without reference to property, or the wealth of the electors. In eight of these States citizenship is the sole qualification of the elector, and in the remaining seven the payment of any tax, either local or general, is the only qualification superadded. The *numbers*, the needy *many*, have had the supreme control over the wealthy *few*, in some of those States for forty years, in some thirty, in some twenty, and in some ten, in some five. And what has been the practical result? Look at *their* situation, Sir, and look at *ours*. Do we not see among them the richest and most prosperous States of the Union? Has a single instance occurred of a Legislative invasion, by the poor, of the rights of the wealthy? Not one. The machine of Government has rolled smoothly on, and property has been found, as it ever will be found, able to protect itself, without *constitutional barriers* in the shape of *odious privileges*. So much for the *general question*, whether property is endangered by leaving the people in possession of their *natural and equal rights*. . . .

[66] Mr. Abel P. Upshur. It is contended by our opponents, that the proper basis of representation in the General Assembly, is white population alone, because this principle results necessarily from the right which the majority possess, to rule the minority. I have been forcibly struck with the fact, that in all the arguments upon this subject here and elsewhere, this right in a majority is assumed as a postulate. It has not yet been proved, nor have I even heard an attempt to prove it. It is for this proof that I was desirous to wait. Assuming this right as conceded, the whole scope of the argument has been to prove, that in the application of the right to the practical Government, we must of necessity, graduate political power according to white population alone. It may not perhaps, be more curious than profitable, to examine somewhat in detail, the grounds upon which this pretension rests.

There are two kinds of majority. There is a majority in *interest*, as well as a majority in number. If the first be within the contemplation of gentlemen, there is an end of all discussion. It is precisely the principle for which we contend, and we shall be happy to unite with them in so regulating this matter, that those who have the greatest stake in the Government, shall have the greatest share of power in the administration of it. But this is not what gentlemen mean. They mean, for they distinctly say so, that a majority in number only, without regard to property, shall give the rule. It is the propriety of this rule, which I now propose to examine.

If there be, as our opponents assume, an original, *a priori*, inherent and indestructible right in a majority to control a minority, from what source permit me to inquire, is that right derived? If it exist at all, it must I apprehend, be found either in some positive compact or agreement conferring it, or else in some order of our nature, independent of all compact, and consequently prior to all Government. If gentlemen claim the right here as springing from positive compact, from *what compact* does it spring? Not certainly from that Constitution of Government which we are now revising; for the chief purpose for which we have been brought together, is to correct a supposed defect in the Constitution, in this very particular. Not certainly from any other Constitution or form of Government, for to none other are we at liberty to look, for any grant of power, or any principle which can bind us. The right then, is not conventional. Its source must be found beyond all civil society, prior to all social compact, and independent of its actions. We must look for it in the law of nature; we have indeed been distinctly told, that it exists in "necessity and nature;" and upon that ground only, has it hitherto been claimed. I propose now to inquire whether the law of nature does indeed, confer this right or not.

Let me not be misunderstood, Sir. I am not now inquiring whether, according to the form and nature of our institutions, a majority ought or ought not to rule. That inquiry will be made hereafter. At present, I propose only to prove that there is *no original a priori* principle in the law of nature, which gives to a majority a right to control a minority; and of course, that we are not bound by any obligation *prior to society*, to adopt that principle in our civil institutions.

If there be any thing in the law of nature which confers the right now contended for, in what part of her code, I would ask, is it to be found? For my own part, I incline strongly to think, that, closely examined, the law of nature will be found to confer no other right than this: the right in every creature to use the powers derived from nature, in such mode as will best promote its own happiness. If this be not the law of nature, she is certainly but little obeyed in any of the living departments of her *empire.* Throughout her boundless domain, the law of force gives the only rule of right. The lion devours the ox; the ox drives the lamb from the green pasture; the lamb exerts the same law of power over the animal that is weaker and more timid than itself; and thus the rule runs, throughout all the gradations of life, until at last, the worm devours us all. But, if there be another law independent of force, which gives to a greater number a right to control a smaller number, to what consequence does it lead? Gentlemen must themselves admit, that all men are by nature *equal*, for this is the very foundation of their claim of right in a majority. If this be so, each individual has his rights, which are precisely equal to the rights of his fellow. But the right of a majority to rule, necessarily implies a right to impose restraints, in some form or other; either upon the freedom of opinion or the freedom of action. And what follows? Each one of three, enjoys the same rights with each one of four, and yet it is gravely said, that because four is a majority of the seven, *that* majority has a right to restrain, to abridge, and consequently, to destroy all the rights of the lesser number. That is to say, while all are by nature equal, and all derive from nature the same rights in every respect, there shall yet be a number, only one less than a majority of the whole, who may not by the law of nature possess any rights at all! . . .

[69] The subject, Mr. Chairman, is scarcely worth the examination it has received. I will pursue it no farther, since I have no intention to give you a treatise on natural law, instead of an argument upon the practical subject of Government. I have thought it necessary to go thus far into an examination of the subject, because gentlemen have founded themselves upon what they are pleased to consider an axiom, that there is in a majority, an *a priori*, *inherent* and *indestructible* right to rule a minority, under all circumstances, and in every conceivable condition of things. And one of them at least has been understood by

me, as referring this right to the law of nature; a law which he supposes, no society cannot repeal, and which therefore, is of original and universal authority. Surely this is a very great mistake. Nay Sir, there is proof enough before us that gentlemen themselves, who claim this right, and who seek to give it solemnity by referring it to the very law of our being, do not venture to carry it into the details of their own system. If there be a right in a majority of persons or of *white* persons, to rule a minority, upon what principle is it that the right of suffrage is restricted? *All* are counted, in making up the majority; and each one of the majority, ought of consequence, to possess a share in its rights. Why then do you not admit women to the polls? Nature has stamped no such inferiority upon that sex, as to disqualify it under all circumstances, for a safe and judicious exercise of the right of suffrage. And why exclude minors? Infants who have not acquired language, or whose intellects are not sufficiently unfolded to enable them to understand their own actions, may be excluded from the necessity of the case. . . . What is there then, which indicates the precise period of twenty-one years, as the earliest at which these members of the ruling majority, may exercise the rights which belong to them? This, and this only: that the rule which is furnished by nature, is unfit for a state of society, and we are compelled, in our own defence, to adopt an arbitrary rule of our own, which is better suited to our actual condition. There is no one among us so wild and visionary, as to desire universal suffrage; and yet it is perfectly certain that, at the moment when you limit that right, in however small a degree, you depart from the *principle* that a majority shall rule. If you establish any disqualification whatever, there is no *natural necessity*, nor even a *moral certainty*, that a majority in any given community, will not come within the exception. And this state of things may by possibility, exist within every election district in the Commonwealth: and thus you establish a rule, with reference to the *entire body*, which is rejected in every *constituent member* of that body. Surely, gentlemen cannot claim the benefit of a principle, which will not bear to be pushed to its practical consequences; a principle which they themselves are obliged to desert as unwise, unsafe and impracticable, in the details of actual Government.

In truth, Mr. Chairman, *there are no original principles of Government at all.* Novel and strange as the idea may appear, it

is nevertheless, strictly true, in the sense in which I announce it. There are no original principles, existing in the nature of things and independent of agreement, to which Government must of necessity conform, in order to be either legitimate or philosophical. The principles of Government, are those principles only, which the people who form the Government, choose to *adopt and apply to themselves*. Principles do not *precede*, but spring out of Government. If this should be considered a dangerous novelty in this age of improvement, when all old fashioned things are rejected as worthless; let us test the doctrine by reference to examples. In Turkey, the Government is centered in one man; in England, it resides in King, Lords, and Commons; and in the Republics of the United States, we profess to repose it in the people alone. The principles of all these Governments are essentially different; and yet will it be said that the Governments of Turkey and England are no Governments at all, or not legitimate Governments, because in them, the will of a majority does not give the rule? Or, will it be said, that our own Governments are not legitimate, because they do not conform to the despotic principles of Turkey, nor recognise the aristocracy of England? If there be these original principles at all, we must presume that they are uniform in themselves, and universal in their application. It will not do to say that there is one principle for one place, and another principle for another place. The conclusion resulting from the reasoning of gentlemen will be, that there is one Government in the world which is *really* a Government, rightful and legitimate; and all other forms of social compact, however long, or however firmly established, are no Governments at all. Every Government is legitimate which springs directly from the will of the people, or to which the people have consented to give allegiance. And I am not going too far, in asserting that Governments are free or otherwise, only in proportion as the people have been consulted in forming them, and as their rulers are directly responsible to them for the execution of their will. It matters not what form they assume, nor who are the immediate depositories of political power. It may suit the purpose of the people, as it once suited those of Rome, to invest all authority in a Dictator; and if the people choose this form of Government; if their interest and safety require that they shall submit to it, what original principle is there which renders it illegitimate? If the majority possess all power,

they possess the power to *surrender* their power. And if it be just and wise that they should do so, it is still their own Government, and no one can impugn its legitimacy.

I have thus, Mr. Chairman, endeavored to prove, that there is not in nature, nor even in sound political science, any fundamental principle applicable to this subject, which is mandatory upon us. We are at perfect liberty to choose our own principle; to consult all the circumstances which attend our condition, and to mould our Government as our interests and necessities may require. . . .

[313] Mr. John Randolph. As long as I have had any fixed opinions, I have been in the habit of considering the Constitution of Virginia, under which I have lived for more than half a century, with all its faults and failings, and with all the objections which practical men—not theorists and visionary speculators, have urged or can urge against it, as the very best Constitution; not for Japan; not for China; not for New England; or for Old England; but for this, our ancient Commonwealth of Virginia.

But, I am not such a bigot as to be unwilling, under any circumstances, however imperious, to change the Constitution under which I was born; I may say, certainly under which I was brought up, and under which, I had hoped to be carried to my grave. My principles on that subject are these: the grievance must first be clearly specified, and fully proved; it must be vital, or rather, deadly in its effect; its magnitude must be such as will justify prudent and reasonable men in taking the always delicate, often dangerous step, of making innovations in their fundamental law; and the remedy proposed must be reasonable and adequate to the end in view. When the grievance shall have been thus made out, I hold him to be not a loyal subject, but a political bigot, who would refuse to apply the suitable remedy. . . .

It is not the least of my regrets that one of the most inevitable consequences of these changes, if they shall take effect, will be totally to change all the politics of Virginia in reference to the Federal Government; (without considering the hands in which it may happen to be placed,) and I do confidently believe, that the very greatest cause of them is to be found in the hope of producing that all-desired change. In many cases I know it to exist, of my own personal knowledge.

Sir, we can't shut our eyes to the Federal Government.

When in 1788, the Convention of Virginia adopted the Federal Government as a part of her Constitution, they effected a greater change in our Constitution than the wildest reformer now suggests to us: to estimate the amount of that change we must have reference to her interests and power at that day: if not, we may call *ourselves* Statesmen, but the world will apply to us a very different epithet. Among innumerable causes why I now oppose a change, is my full recollection of the change which was then brought about. I have by experience learned that changes, even in the ordinary law of the land, do not always operate as the drawer of the bill, or the Legislative body, may have anticipated: and of all things in the world, a Government, whether ready made, to suit casual customers, or made per order, is the very last that operates as its framers intended. Governments are like revolutions: you may put them in motion, but I defy you to control them after they are *in* motion. . . .

. . . . What provision is there, Mr. Chairman, either in the Constitution of Virginia or the Constitution of the United States, which establishes it as a principle, that the Commonwealth of Virginia should be the sole restraining and regulating power on the mad and unconstitutional usurpations of the Federal Government? There is no such provision in either:—yet, in practice, and in fact, the Commonwealth of Virginia has been, to my certain knowledge, for more than thirty years, the sole counterpoise and check on the usurpations of the Federal Government—so far as they have been checked at all: I wish they had been checked more effectually.

For a long time, our brethren of the South, because we were the frontier State of the great Southern division of the Union, were dead to considerations to which they have, I fear, awaked too late. Virginia was left alone and unsupported, unless by the feeble aid of her distant offspring, Kentucky. It is because I am unwilling to give up this check, or to diminish its force, that I am unwilling to pull down the edifice of our State Government from the garret to the cellar; aye, down to the foundation stone. I will not put in hazard this single good, for all the benefits the warmest advocate of reform can hope to derive from the results of this body. . . .

Mr. Chairman, since I have been here, the scene has recalled

many old recollections. At one time, I thought myself in the House of Representatives, listening to the debate on the Tariff; at another time, I imagined myself listening to the debate on the Missouri Question; and sometimes I fancied myself listening to both questions debated at once. Are we men? met to consult about the affairs of men? Or are we, in truth, a Robin-hood Society? discussing rights in the abstract? Have we no house over our heads? Do we forget, that we are living under a Constitution, which has shielded us for more than half a century—that we are not a parcel of naked and forlorn savages, on the shores of New Holland; and that the worst that can come is, that we shall live under the same Constitution that we have lived under, freely and happily, for half a century? To their monstrous claims of power, we plead this prescription; but then we are told, that *nullum tempus occurrit Regi*—King whom? King Numbers. And they will not listen to a prescription of fifty-four years—a period greater, by four years, than would secure a title to the best estate in the Commonwealth, unsupported by any other shadow of right. Nay, Sir, in this case, prescription operates *against* possession. They tell us, it is only a case of long-continued, and, therefore, of aggravated injustice. They say to us, in words the most courteous and soft, (but I am not so soft as to swallow them,) "we shall be—we will be—we must be your masters, and you shall submit." To whom do they hold this language? To dependents? weak, unprotected, and incapable of defence? Or is it to the great tobacco-growing and slave-holding interest, and to every other interest on this side the Ridge? . . .

[319] Mr. Chairman, I am a practical man. I go for solid security, and I never will, knowingly, take any other. But, if the security on which I have relied, is insufficient, and my property is in danger, it is better that I should know it in time, and I may prepare to meet the consequences, while it is yet called to-day, than to rest on a security that is fallacious and deceptive. Sir, I would not give a button for your mixed basis in the Senate. Give up this question, and I have nothing more to lose. This is the entering wedge, and every thing else must follow. We are told, indeed, that we must rely on a restriction of the Right of Suffrage; but, gentlemen, know, that after you shall have adopted the report of the Select Committee, you can place no restriction upon it. When this principle is in operation, the waters are out. It is

as if you would ask an industrious and sagacious Hollander, that you may cut his dykes, provided you make your cut only of a certain width. A rat hole will let in the ocean. Sir, there is an end to the security of all property in the Commonwealth, and he will be unwise, who shall not abandon the ship to the underwriters. It is the first time in my life, that I ever heard of a Government, which was to divorce property from power. Yet, this is seriously and soberly proposed to us. Sir, I know it is practicable, but it can be done only by a violent divulsion, as in France—but the moment you have separated the two, that very moment property will go in search of power, and power in search of property. "Male and female created he them;" and the two sexes do not more certainly, nor by a more unerring law, gravitate to each other, than power and property. You can only cause them to change hands. I could almost wish, indeed, for the accommodation of the gentleman from Augusta, that God had ordained it otherwise; but so it is, and so it is obliged to be. It is of the nature of man. Man always has been in society—we always find him in possession of property, and with a certain appetite for it, which leads him to seek it, if not *per fas*, sometimes *per nefas;* and hence the need of laws to protect it, and to punish its invaders.

But, I am subjecting myself, I know, to a most serious reproach. It will be said that I am not a friend to the poor. Sir, the gentleman from Chesterfield and the gentleman from Spottsylvania, have dealt with the "friends of the people" to my entire satisfaction. I wish to say a word as to the "friends of the poor." Whenever I see a man, especially a rich man, endeavoring to rise and to acquire consequence in society, by standing out as the especial champion of the poor, I am always reminded of an old acquaintance of mine, one Signor Manuel Ordonez, who made a comfortable living, and amassed an opulent fortune by administering the funds of the poor. Among the strange notions which have been broached since I have been on the political theatre, there is one which has lately seized the minds of men, that all things must be done for them by the Government, and that they are to do nothing for themselves: The Government is not only to attend to the great concerns which are its province, but it must step in and ease individuals of their natural and moral obligations. A more pernicious notion cannot prevail. Look at that ragged fellow staggering from the whiskey shop, and see that slattern who has gone

there to reclaim him; where are their children? Running about, ragged, idle, ignorant, fit candidates for the penitentiary. Why is all this so? Ask the man and he will tell you, "Oh, the Government has undertaken to educate our children for us. It has given us a premium for idleness, and I now spend in liquor, what I should otherwise be obliged to save to pay for their schooling. My neighbor there, that is so hard at work in his field yonder with his son, can't spare that boy to attend, except in the winter months, the school which he is taxed to support for mine. He has to scuffle hard to make both ends meet at the end of the year, and keep the wolf from the door. His children can't go to this school, yet he has to pay a part of the tax to maintain it." Sir, is it like friends of the poor to absolve them from what Nature, what God himself has made their first and most sacred duty? For the education of their children is the first and most obvious duty of every parent, and one which the worthless alone are ever known wholly to neglect.

Mr. Chairman, these will be deemed, I fear, unconnected thoughts; but they have been the aliment of my mind for years. Rumination and digestion can do no more; they are thoroughly concocted.

In the course of not a short or uneventful life, I have had correspondence with various persons in all parts of the Union, and I have seen gentlemen on their return from the North and the East, as well as from the new States of the West; and I never heard from any of them, but one expression of opinion as it related to us in Virginia. It was in the sentiment, if not in the language of Virgil; Oh, fortunate, if we knew our own blessedness. They advise us with one voice, "Stick to what you have got; stick to your Constitution; stick to your Right of Suffrage. Don't give up your freehold representation. We have seen enough of the opposite system, and too much." . . . .

DEBATES IN THE LOUISIANA CONSTITUTIONAL CONVENTION OF 1845 [1]

With debates over the extension of the suffrage came discussions of the number of elective offices. Under the early state constitutions the members of the legislature were usually the only elective officers; gradually the elective principle was applied to other positions and, during the nineteenth century, most of the states adopted constitutions providing for the election of many of the more important executive and judicial officers. Debates over the method of selecting the judiciary were a feature of nearly all of the conventions of the first half of that century. This selection from the debates in the Louisiana Convention is typical of the theories advanced by those favoring the different methods.

[268] Mr. Preston. . . . It is true that things do occasionally occur at our elections, that are disgusting. But these are the abuses of a popular system of government. They do not, however, outweigh the manifold benefits and blessings of that system—one advantage of which, is the very facility afforded to the people of scrutinizing the pretensions of those that would serve them; of examining into their qualifications. It is intelligence speaking to intelligence. It puts the candidate to the ordeal of public opinion—he is scanned with scrutinizing eyes—to make use of a common expression, the people have the opportunity of twigging him, to see of what stuff he is made. Where is the harm in this? If this is what is considered electioneering, I can see no harm in it. But if by electioneering he meant the abuses, the excrescence, the aberrations from correct principles, I admit these are lamentable, still they are no argument against the general principle. When men of high intelligence become candidates for office, they instruct and enlighten the people of the State. They instruct those of less experience as to the capabilities of the State; the true course of State policy. Nothing is calculated more to enlighten the electors. They hear aspiring men discuss grave and important topics of public concernment, and are always ready and anxious to be present at these debates. When important political questions are pending, how often have we seen the public meetings thronged, and the anxious crowd remaining until 11

[1] *Proceedings and Debates of the Convention of Louisiana, which Assembled at the City of New Orleans, January 14, 1844.* . . . New Orleans: Besancon, Ferguson & Co., 1845.

o'clock at night to hear the words of experience of some old, grave man, who has been called upon to shed the light of his intelligence upon those questions. The people are ever ready to glean all the information they can, in order to act understandingly. The consequence of discussion is that the people obtain information, and the humblest citizen who retires to his simple cottage, carries with him and treasures up some of the important facts that may have been elicited in that discussion. It is this interchange of thought and facility of hearing every public question discussed, that disseminated so much general information among the people, and gives them a decided advantage over the people of other countries. What makes the servility of the Russian serf; the fanaticism of the Spanish peasantry? It is the distance at which they are kept from the power that governs them. They are not instructed by their public men, nor enlightened as to measures of public policy. They are not the sources of honors and rewards, as the people of this happy country. No public man feels himself here too proud or too pure to address his fellow citizens, and suggest to them his views. The result is, that the good of the country is promoted.

I will repeat again, that the people are capable and have the virtue to select their public servants for themselves, without any restraint or restriction, and the strongest proof of that intelligence and virtue is, that a viscious man always appeals to virtue and to the rectitude of his purposes. This observation holds good throughout the length and breadth of the land, and shows the regard which is felt for virtue and intelligence among the masses. I care not where a candidate may address the people, be it in the midst of a tavern, where a mob may be collected together, this appeal is invariably heard, which shows that he well understands that that is the chord he must touch, if he expects success. This proves that although there are excesses, there is no lack of virtue or intelligence in the people themselves. An ignorant man who aspires to serve the people, is invariably destined, if the masses only have the opportunity, to have the shallowness of his capacities detected. The humblest among them will say, "well, that man has no more sense than I; how can he pretend to such an office?" The people pride themselves upon the talents of their public officers. They have great virtue. I speak generally. Out of twenty indiscriminately taken, the twentieth may be a base man; but he is the exception.

There is no disgrace, to my humble conception, to the ermine of judicial dignity, in a judge addressing the people, when the partialities of his fellow citizens induce him to become a candidate for any public station. He may address them by public speech or in writing. The principle of our government is, that every man should have the freedom of speech, and be eligible to serve his country, whether he be a private citizen or the incumbent of any particular office. This glorious privilege cannot appropriately be infringed in any instance, and the judge of the supreme court who may be induced to become a candidate, is just as much exposed to be conned and to be scrutinized as any other citizen that may offer. . . .

[298] Mr. Marigny is determinedly opposed to any change in the section, which it will be observed is the section verbatim of the one in the constitution of 1812. That section gives the power to the governor of nominating judges, by and with the advice and consent of the senate; and therefore it is a power that behooves us to study, whether properly given or not; and it is a question we ought not to run headlong against in the heat of our feelings.

In the first place we should consider well what we have already done to increase popular rights. We have established universal suffrage; and we have removed the property qualifications, (heretofore considered a disability unless possessed by the citizens,) as a requisite for eligibility to the office of governor. Of this augmentation to popular rights and privileges, he, (Mr. Marigny,) does not complain; on the contrary, he thinks we have acted wisely for the benefit of the people as a whole, and in accordance with the liberal spirit of the age. But in approaching the judiciary, he thinks we ought to take into consideration that we are approaching an interest which should claim our serious attention; actuated, as we doubtless all are, by a spirit of justice, and with a determination to deprive no one of his just rights, we cannot forget that it is our duty to protect every citizen in all his just rights and his property; this is a vital and important principle. The tranquility of the State materially depends upon our action on this subject; and we cannot do better, nor can we show more wisdom, in any of the deliberations of this Convention, on this question. The more guarantees you offer, and the more safeguards you throw around the judiciary department to make it completely independent of the popular will, (or caprice if you will,) the more you will show

that you are actuated by a wise and honorable spirit. What becomes of the independence of a judge, where his election depends on popular will? Suppose you were now to say that the judges of the supreme court should be elected by the people. Is it not too probable that some favorite political partizan would be raised to the office, in lieu of a man of great legal attainments and moral worth? And then, what is the consequence? Why, instead of having on the bench a man who feels the sanctity of his oath, and is properly impressed with feelings of duty, as would be the case were he nominated by the governor and confirmed by the senate, who are always the conservative body, that protects the rights of the minority, and who feel their responsibility. We should have a man on that hitherto dignified bench, who would suffer his judgment to be scourged by his politics, and the passing popular feeling of the hour. Let us follow up the question, and ask what would be the result of having a district judge elected by the people? He decided all civil and criminal matters—and will it not be dangerous to the rights of a community, if the election of district judges, is left to the will of a majority of the people; a judge who has the destiny in his hand over the liberty, even the life of an individual, who it might happen would be a very popular man, and however guilty, may, nevertheless, by his popularity place the judge in a position of awful responsibility. I am sure you will see at once the position a judge may thus be placed in—between a conscientious discharge of his duty and his desire to lean to the side of friendship and spare the feelings of the numerous friends of the offender to the law. Let us then preserve the bench, independent of such influences, or justice will take her departure from amongst us. . . .

[744] Mr. Brent. . . . Any government, to answer the wise purposes for which all governments were established, must have its foundation laid deep in the respect and affections of the people. And this is particularly true as relates to a government, which, like ours, reposes on the broad foundation of the popular sovereignty. A popular government can never be energetic and efficient, unless it is sustained by the stout hearts and strong arms of the People. Upon what other power can that government rely, but the power of the people! Laws may be framed—whole volumes of statutes may be enacted, but they cannot be executed and enforced, if passed in defiance of the public will. The popular feature

is the strongest feature in our constitution. When President Jackson encountered nine hundred banks of paper money, what was it that sustained his administration against the colossal strength of these institutions, but the fact that he was the great tribune of the people? If, instead of being elected by the popular suffrage, he had held his office from the vote of the Senate or the national Legislature, powerful as he was, he would have been crushed and overborne by the hydra brood that hissed around him, and nothing sustained him, but the fact, that he was upheld and supported by the strong and mighty arm of the American yeomanry that elected him. The greater participation the people have in the government, the more they are taught to believe that it is *their* government, the greater will be its energy and efficiency, and the better will it answer the wise purposes for which all laws were framed, and all governments established.

I may be mistaken, but I believe that the adoption of no measure which has yet engaged the attention of this Convention, or which will engage its attention, would diffuse so much joy into the hearts of the people, as the adoption of the measure now under debate. When I speak of the people, I do not speak of those who occupy distinguished stations upon the bench and at the bar, nor do I speak of those who have reached the elevated theatre of political life and public distinction; and still less do I speak, of those butterflies, who sport in the circles and in the saloons of fashion, but I speak of the plain practical yeomen of the country, the bone and sinew of the land, upon whose virtue, whose firmness and integrity, this government has always relied, and must always continue to rely, for its peace, its security and its permanence.

I know—I do not pretend to conceal the fact, or to deny its existence—I know that the more wealthy and aristocratic classes of society, with a few honorable exceptions, are opposed to the adoption of this measure. They cling to the feature of an Executive appointment of the judiciary, as the drowning mariner clings to the last plank that floats upon the waves, to keep him from going down into the unfathomed depths beneath. The tenacity of the grasp is the same, though the motive and circumstances are widely different. In the one case, it is to save from certain, and inevitable destruction, in the other, from a fancied and imaginary peril.

There have always been two parties that have divided the people of this country—one of them has been in favor of popular government from principle, and hence, as the intelligence of the country advanced, and as experience demonstrated the feasibility and security of the plan, they have advocated, invariably, an extension of the range of popular power. The other party, equally opposed to popular government on principle, have steadily and uniformly resisted every attempt to widen and enlarge the circle of popular rights. Nothing discomposes the nerves of these gentlemen to such an extent, as a proposition to extend the power of the people. It comes upon them like the shock of a Galvanic battery. They can see nothing but death and ruin and disaster, in every departure from old and established usages, and so deep-rooted and deep-seated is their antipathy to popular government, that I doubt not there are individuals among them who had rather see our judges nominated by the Bashaw of Tunis, or the Autocrat of all the Russias, than to see them elected by the direct votes of the people. Between these gentlemen and myself, there is no community of feeling or of thought. We stand as far asunder as the poles. There is a chasm between us as wide as that which separates paradise from purgatory.

The first point which naturally suggests itself to the mind in the investigation of this subject, is that which relates to the political right of the people to elect their judge. Will honorable gentlemen opposed to us, concede that the people have the political right of electing their judges? If so, we shall be grateful for small favors. Should the admission be made, it then follows that I am arguing in favor of nothing that is wrong. I am merely contending for the exercise of a right which is conceded; but perhaps they may deem it advisable not to permit us to make such a strong lodgement on the field of argument as would be at once secured, by the concession of the right. If the right be on our side, we are entrenched at once behind a position, that can be carried neither by siege nor by storm. From under the cover of this redoubt, we could pour upon them the hottest thunderbolts of fight, while reposing ourselves in perfect security from their assaults. Hence the necessity became urgent to dislodge us from this strong hold, and to bring the question, at once, to an issue by a denial of the right of the people to elect their judges.

To deny the right of the people, is to deny at once, that truth

asserted in the Declaration of Independence, that "all governments are instituted for the benefit of the people," and that other truth, asserted in the Bill of Rights, that "all power is inherent in the people." This denial assails the first principles of a popular government, and prostrates in ruins, the Republic which was reared by the hands, and cemented by the blood of our fathers. No man can arise upon this floor, in the face of the assembled representatives of the people, and deny that the people, from whom he holds his trust, are not in full possession of all the rights and powers inherent in the sovereignty of the State. That question, then, I shall regard as settled, and I will hereafter hold the right of the people to elect their judges as indisputable and undisputed.

At this stage of the argument, we may be told that while the right of election by the people is granted, that the expediency of exercising that right is utterly denied. The concession, or the establishment of the right, is sufficient of itself to refute the argument based upon inexpediency. No man can be deprived of a political right, under the pretext that it is expedient for him to exercise it. The right once granted or proved, the free exercise of it follows, else the term "right" is an unmeaning and senseless word, having neither force, nor body, nor shape. Of what avail will it be, to possess a right in theory, if it is to be possessed in theory alone? For instance, I have been invested by the laws and constitution with the political right of suffrage, yet I may abuse that right. Nevertheless, could you deprive me of its exercise upon the pretence that I might abuse it. Again, I have the unquestioned right to manage and control my own private affairs and property as I please, yet it might well happen, that I would abuse that right—that I would squander my means—dissipate my property, and reduce myself to bankruptcy and ruin—still would the Legislature be authorized to withdraw my property from my control, and place it in the hands of a trustee, under the pretext that I might abuse that right.

But what, after all, is this denial of the expediency of the exercise of popular rights, but the old and exploded argument of the monarchist? There is no monarchist on earth, but what will tell you that all governments are instituted for the benefit of the people; yet he will gravely argue, that it is for their benefit that the powers of the government should not be exercised by the people. This is the soothing argument which is to comfort the sorrows,

and bind up the wounds of the crushed and down-trodden masses of the world! Behold the condition of the people of England! There, the very bread is taxed, 'ere it approaches the starving laborer's lips—every thing is taxed that man touches, or wears—the light of heaven, itself, is a source of governmental revenue, and the very habitations of men are darkened by taxation. Yet the people of that country are consoled by the information, that it is much better for them that the powers of the government should be wrested from their hands, where they properly belong, and placed in the hands of their tyrants—a pampered and bloated aristocracy, and a man who wears a crown upon his head, and holds a sceptre in his hands. And now, sir, the very argument which is employed to defend the most odious and grinding despotism on earth, is the very argument which is used by the opponents of an elective judiciary. They tell the people that it is much better for them that they should not exercise the powers which belong to them, of electing their judges; that as the king of England can manage the government much better than the people can, so can the governor in this country attend much better to the appointment of the judiciary. Whether the starving masses of England believe in the principle which dooms them to perpetual slavery, is a problem most easy of solution. Remove for a single day, the military power of that government, and the setting sun would shine upon the ruins of that colossal tyranny, which strides above the fortunes and liberties of her people.

Sir, can the free citizens of our country be deceived by the subtle and deceptive arguments, with which the opponents of an elective judiciary seek to wheedle and cajole them out of the exercise of their undoubted rights? Can they believe that it is for their interest that the most important functionaries of the State, who are called upon daily to decide upon questions involving their lives, their liberty, and their property, should hold their appointment from, and be amenable to, some other authority in the State than that of the people themselves? Human credulity is great; but when the monstrous proposition stands revealed in its naked deformity, the heart of man recoils from it with instinctive loathing and disgust.

Many individuals entertain the opinion that the judiciary system of England is perfect; and that we should so organize that department, as to preserve the leading and important features

established by that government. English authority has no weight with me; but if I can show that according to the true principles of the British government, the appointment of judges should flow in this country from the people, it is altogether probable that some votes might be secured in behalf of an elective judiciary, that could be obtained by no argument based upon the true principles of a republican government. In England, the judges are appointed by the crown. The crown is the sovereignty of the State. Now, where is the sovereign power of our government lodged, if it be not lodged in the hands of the people? The people are with us the sovereignty of the State, and an adherence to the British precedent would require that the judges should be elected by the people. . . .

. . . . According to the theory of our government, there is no power in the State antagonistical to that of the people. It is true, you may build up such a power; you may array one of the departments of the government in opposition to the people; but if you do, you violate the principles of republicanism, and by your own act, you will create a necessity for an irresponsible judiciary, which otherwise would not exist. Now, how do we stand, in reference to this question? We have already decided, and decided very correctly, to abolish life tenure, and the sense of the Convention is unanimous against a judiciary constituted, as it is in England, above all responsibility whatever. Life offices, hereditary titles, and entailed estates, do not comport with the republican feelings and principles of the day. Our supreme court judges are now to hold their offices for the term of eight years. They are no longer to be irresponsible despots, wielding uncontrolled influence over the liberties and property of our people. That question is settled—their responsibility is fixed—and in the investigation of this subject, I would warn gentlemen not to be led into bogs and morasses, by the *ignis fatuus* of an independent judiciary. Upon this question the Convention has moved with a bold and strong hand, and every vestige of an irresponsible judiciary, such as is found in England, has been swept by the board.

This point being gained, and the responsibility of the judiciary being established, another important question presents itself for our decision. The judges are to be held to accountability, and to whom shall we confide the delicate duty of holding them to that accountability? To the governor, the legislature, or the people?

The choice is to be made between these three powers in the State, and between them, who can hesitate?

Every motive of sound policy and expediency requires that the judiciary should be independent of the executive and the legislature. Any other organization of the three departments, would lead to the most deplorable results. Our only safety consists in keeping each of the departments separate from, and independent of the others; and the true and proper independence of the judiciary is to be found in elevating it above the control, and placing it beyond the reach of the co-ordinate branches of the government.

The Judiciary is the balance wheel of our political system. As the balance wheel in the machinery of a steamboat, regulates the stroke of the piston, the movement of the valves, and the harmonious action of the engine, even so is it the office of the judiciary, to steady the movements and working of our system, by giving force and proper direction to the other powers of the government. In a pure despotism, all power centres in the monarch. He is at once legislator, judge, and executive. Just in proportion as you divide and separate these powers, you advance from monarchy to republicanism. . . .

DEBATES IN THE KENTUCKY CONSTITUTIONAL CONVENTION OF 1849 [1]

It has frequently been supposed that the frontier, agrarian, or thinly settled portions of the states were the ones which always clamored for a broader suffrage and a more equal representation in the legislature. Frequently it was just the reverse. As the debates in the New York Convention show, property qualifications for voting might be desired by the rural areas. These extracts from the Kentucky Convention debates are examples of opposition to the population basis of apportionment by representatives of the least thickly settled parts of the state. In certain of the western states there was not a little fear of such urban centers as New Orleans and Louisville, just as in the eastern states there was much jealousy of Boston, New York, and Philadelphia.

[457] Mr. Preston. . . . Sir, there are but three principles to regulate representation, that have been practically acted upon

[1] *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Kentucky.* 1849. Frankfort: A. G. Hodges & Co., 1849.

by men—three principles upon which a representative government is ever based. What are they? The first is geographical extent, the second is property, the third is population. A fourth has been recommended by some, at the head of whom stands Jeremy Bentham. This last, is education, or popular intelligence. I mention this because there are no other principles, that I am aware of, upon which representation proceeds. Sir, up to 1799, the principle prevailed, that property, or territory, should constitute the basis of representation. Kentucky was the first to assert that it should rest purely on population. From the time when the tents of the plebeians whitened the sacred hill, until that auspicious day, the principle had been the continued subject of contest between the people and their rulers. In England, we find that the Norman barons who conquered that country, claimed that representation should be based upon extent of territory, because they possessed the soil. This gave rise to the borough system, and to a contest that lasted from the time of the Norman conquest, down to the year 1838.

In 1838—I think it was—the celebrated "reform bill," of Lord Grey, was introduced in the British parliament, mainly to get rid of that infamous borough system, which had grown up and increased in the progress of time, until Birmingham and Manchester, with a population of two or three hundred thousand souls, had but a single representative, while the Chiltern-Hundreds were under ministerial control, and old Sarum sent two members to parliament. But gentlemen may say that our country is entirely too wise to follow such a system. By no means. It is now in existence in this country. I recollect a gentleman of Carolina told me that a member of the Carolina legislature had invited every one of his constituents to a dinner-party. In Virginia, the people have struggled in vain to extirpate this cancer from the body politic, and they have almost succeeded in eradicating it. In Maryland, the same principle is now in partial operation, and this doctrine, to a greater or less extent, pervades the constitutions of many states, particularly on the Atlantic border.

In some states, where the principle of numbers was forced upon their consideration, in preference to free-hold qualifications, they acquiesced on the condition that paupers should be excluded, and that some other restrictions should remain. At this hour in Massachusetts, a property qualification is virtually required, by exclud-

ing paupers from voting. Let us turn to the constitution of Massachusetts.

"There shall be annually elected, by the *free-holders*," &c. This, the original feature, under the popular demand, was altered in 1821, so that "every free male citizen, excepting *paupers*," &c. were admitted to the right of suffrage.

New York, under her new constitution, has done what? She has declared the broad principle that numbers shall be the basis of representation. She has adopted fully the Kentucky doctrine; this was not the case when our common confederacy was formed.

In regard to Kentucky, the last of the old thirteen states—if you may so call her—the eldest born child of the new thirty—if you so choose to style her—what principle does she set out upon? Let me read, for it is the first time certainly that this great truth ever emanated from a constitutional body. The sixth section of the constitution declares, that representation shall be equal and uniform, in this commonwealth. It runs thus:

"Representation shall be equal and uniform in this commonwealth; and shall be forever regulated and ascertained by the number of qualified electors therein."

To her eternal honor, be it said, she was the first to promulgate it.

This is the principle that Kentucky has established. This is the ground she occupies, and I want those who seek to curtail the rights of suffrage in this state, to come up fairly, and point out the necessity for making an exception.

I have alluded to the evils of the borough system. There is no doubt, at this time, in the hearts of the people of many of the states, as wealth increases, a growing inclination to return to the system of property qualification. You see them attempting to effect this in many of the states, although we have always repudiated the principle here. In the states of Virginia, Massachusetts, and others, under their present constitutions, a property qualification still exists. No man, until he shall have paid his taxes, or possesses some freehold qualification, is allowed to vote. I want to occupy a broad and tenable ground, and it is, that there shall be no qualification required of a man here, except that he shall be a free white male citizen of the state of Kentucky.

Now, sir, gentlemen tell us that it is necessary to put this restriction upon senatorial representation, and they compare the

counties of Kentucky to the states of this confederacy, and say that Delaware has two senators in congress, while New York has no more. He must be confident of a credulous audience who would urge, with any degree of gravity, this as a reason.

Why has Delaware two senators, and New York but two? It was because the states were sovereign that came into the compact, and the senators are the representatives of those sovereignties. The larger states had the same right of sovereignty as the smaller; the smaller as the larger. But do gentlemen say that the counties in the state stand upon the same footing as a sovereign power. I would ask the gentleman from Madison if he would assent that counties irrespective of population shall be represented in the senate. Does the constitution of Kentucky regard counties as sovereign. In the twelfth section it says, "and where two or more counties compose a district, they shall be adjoining."

That is, it orders the joining of two or more counties together, for the purpose of representation, when circumstances require, and it seems the framers of the constitution of 1799, at least, had no idea of regarding the counties as being separate and independent sovereignties. The thing is absurd in itself. There is no parallel, or at least the parallel has no force in it. . . .

We have not only been menaced with an outrage of our rights, but we have been insulted, in common with our sister counties of the northern border on the Ohio river. If our rights are denied to us, let it be so. If they are qualified, let it be so. It is against the best defence that I could interpose, and notwithstanding my feeble opposition. If you are determined that the agricultural classes shall tyrannize over the manufacturing classes—if you thrust them to the earth, be it so. But never say it was done without remonstrance against the injustice, against the wrong.

The gentleman from Madison says, that this iniquitous movement is necessary to protect the agricultural, to the exclusion of the manufacturing interests. I now ask this house, if they will solemnly assert, that the manufacturing interests of Kentucky are to be proscribed? Have Covington, Newport, Louisville, Paducah, have those cities and counties along the river, so wronged and degraded and impoverished the state, that they are to be the subjects of political proscription? The gentleman seems to feel a holy horror in looking at the wretched condition—as he calls it—of the northern frontier of the state. In one sweeping charge he

declared we are all teeming with abolitionism. He denounces the city of Louisville in particular, as if he did not entertain many of the sentiments, which are esteemed characteristic of that party, to which he alluded. He has eloquently advocated the law of 1833 and those sentiments upon this floor; but he has changed his position, so rapidly that you would now think him the most earnest against the abolition movement in this state. . . .

[463] Mr. Ballinger. . . . I have listened also with delight to the gentleman from Louisville, (Mr. Preston,) and when he has confined himself to the facts which operate upon this subject, when he has not drawn upon his fancy and gone off to other subjects that have no connection with it, I have also been delighted. But when he has brought arguments and statistics to bear on the subject, instead of strengthening his cause, they are calculated to produce alarm, and to show the dangers that are to be apprehended from its success. The gentleman from Louisville shows conclusively that they are building up in his section of the state, an overweening power that is to exercise a great influence upon the state. He shows that there is a population pouring in and increasing there now, in an unparalleled degree, over all the other portions of the state. He shows that there is a power increasing there, which in connection with the increasing power of the surrounding districts, will be sufficient to carry almost any proposition that Louisville may desire to have carried, in order to promote her own interests. What is the subject under debate here? It is not one that is to call forth loud denunciations, as if it was an atrocious position that the gentleman from Madison has assumed. Why, sir, if any one were to come in here, and not know what was the subject under debate, he would at once deem that he had been advocating a proposition here that was sufficient to draw upon his head the denunciation of all good and just men. Is there any thing atrocious in the principle he has been contending for? If there is, those who engrafted it upon our present constitution, under which we have been living for the last fifty years, are entitled to a portion of that denunciation.—Those pure and enlightened patriots, who, acting for posterity, and they did so act when they gave us a constitution under which we have lived and prospered, and whose memory we now almost idolize,—those men, I say, if the gentleman from Madison, who was the first to speak on this subject, is entitled to any denunciation, are at least

entitled to their share of the abuse. It is the principle we find engrafted on the present constitution, and what is it? Every department of government is to be a check upon and protection against the other. The executive, legislative, and judiciary departments, have separate and distinct duties, and separate and distinct powers—the one is not a branch of the other. The legislative department then is divided into a senate and house of representatives. What is the use of this senate? Why not go upon the present organization of the French government, and have a single legislative assembly based upon that foundation? What is the use and necessity of the senate, if it is not to operate as a balance wheel, and is not to constitute a check upon the house of representatives? Why, that is its whole object, otherwise it would be wholly unnecessary. We find the people to be represented more immediately in the house of representatives. They come fresh and direct from the people, and represent them more immediately in all their monetary concerns. The senate is designed then, when the representatives are disposed to go into unnecessary extravagance, on account of its experience and the more mature age of its members, to step forward and check them. If it is so atrocious a principle, the gentlemen themselves are acting under it, and I imagine they would be the last to abolish it. If it is good in one association, it is good in another; if it is good in one relation, it is good in another.

Examine your federal representation, and you will find the senate there, is not based on popular numbers. Why is it not? Because it is for the purpose of protecting the great interests of society—and that minorities may be protected as well as majorities. Strike out this principle, and you at once come upon a state of things where minorities may be crushed. The gentleman himself, the young soldier who girded on his sword, and went forth to avenge his country, and vindicate her honor, would be one of the first to step forward and resist the abrogation of that principle. It is founded on a different principle from what he has assumed it to be. It is not that one sovereign shall be protected against another, but that the rights of the minority may be protected against the encroachment of the majority. Look at the southern states, and see the helpless position they now occupy in relation to the rest of the Union. Sir, this institution we have come here to protect, and that we are seeking to perpetuate to

posterity, would be swept off as with a besom of destruction from every part of this continent, if this was so. And still the gentleman will come forward and tell us that this representation exclusively on population is the only proper and right mode of action, when he himself would be the first to resist the encroachments of the majority upon the minority. If that was the only true principle, the south would now be crouching and submissive to the north, or be obliged to throw herself into a rebellious, or revolutionary attitude against the balance of the Union, and scenes of riot and bloodshed, and universal massacre ensue. And yet the gentleman will come forward and tell us that when applied to our own state, this principle is an atrocious one. Carry out his argument, and it will not bear investigation. What has he ever been contending for but that the senate is the saviour of the Union? He, like all others has been contending for the extension of the area of slavery to keep up the balance of power, and let the great balance wheel of this government roll on without a jostle. Well, how does it apply to us. We find that within a few years, our voting population has sprung from 133,000, to 155,000 voters. Where does this immense increase come from? It is not in the interior, or on the southern borders, or in the mountain country. Where is it? Why the great increase is here, upon the northern frontier, bordering upon the free states, and into which this foreign population is now pouring. It is not a native increase, it is an extensive foreign increase, which is pouring upon us, and against which we should guard. Not by excluding them from the rights which they may legitimately enjoy, but to provide against it, by keeping this balance wheel as we found it. I rejoice in the growth of the city of Louisville, and in her prosperity. Our great agricultural region is immediately connected with her. She is the market into which we throw our wealth; and the growth of every year. I wish her therefore to continue to grow and prosper, but I do not wish her to attain a position, nor the counties of the gentlemen from Kenton and Campbell and others, by their rapid increase, to attain a position to control and govern the commonwealth. What is the present population of Louisville? About 50,000. She is moving on with giant strides. She is establishing manufactures, and is drawing a population to her, and every year her thousands are increasing. Well now, the gentleman is just placing us in the attitude that he has been warning us against. He says Kentucky

constitutes about one fourth of the area of France. Well suppose it does. If then, a single city can govern a country of 30,000,000 of people, cannot a single city, by her wealth and power, influence the legislation of Kentucky? Look at Paris. Why, whenever a revolution breaks out, whenever a single movement is made there, it vibrates from the centre to the extremity of France, just like an electric shock. It is always the same case. Why, the single city of Paris governs the whole of France. She overthrows a monarchy and establishes a republic, and then she requires a standing army to keep her from again crowning some royal head with the diadem. Does the gentleman want to build up a great city with such an influence? Not that I believe the people of Louisville would ever wish to exercise it for such a purpose. But look at her condition now. She is increasing in commerce and manufactures, and exhibits a greater concentration of wealth than any other portion of Kentucky. The gentleman has referred to Boston. Well, sir, look at Boston; has she not now the whole state of Massachusetts tributary to her, encircling as she has that broad commonwealth, with her iron arms. What is Louisville doing. She is building her rail roads to keep up her prosperity, to extend her influence, and to support her people. She is seeking to spread her influence all through the state. Here is a rail road extending to Lexington, and others are perhaps in contemplation, and she is indeed extending forth her arms for the purpose of grasping the whole state. Sir, that is the influence the gentleman is here attempting to bring upon the state of Kentucky. Well, to a certain extent, I want to see it, for these public improvements are a benefit to other portions of the State. But I do not wish to see her influence extended thereby, so as to control the state. I am for her legitimate influence on the floor of the house of representatives, and if that body chooses to run riot and go into wild excesses on the subject of internal improvements, as they have heretofore done, I want to have a check upon them, through the senate.

Well, how is this population made up? It seems strange, but you can get a voting population there for almost any purpose. Look at the statistics, as presented here in the second auditor's report, and we find that in 1847, when perhaps a particular object was in view, there was a voting population in Louisville alone, of near 7,000. Well, in 1848, we find that it was 5,000 and some-

thing over. It is a fluctuating population, and can be increased at will, for almost any purpose. It is here to-day, and gone to-morrow. Suppose you want to make out an apportionment bill; if the people are so disposed, you can bring in this amount of population and swell it up to any amount that may be necessary to give them a powerful representation in the senate. What is the state of the interior of Kentucky? The people there are stationary. Their pursuits are agricultural; and wealth and population, and every thing else there, is more equally distributed and divided than in the cities. You do not find those enormous fortunes, and that extreme and abject poverty there that you do in cities; but you find property more generally diffused among the people. . . .

. . . . As the gentleman from Madison well observes, take a region of some ten or twelve miles on the Ohio, that would be intimately connected and interested in common, and you will find that they constitute nearly one third, if not one half, of the voting population of the state. Give to Louisville, with a population of 100,000, as she will probably attain in a few years—give to Covington, opposite Cincinnati, which has now some 12,000, and which has broke on us like a meteor, and give her a population of 50,000—give to the city of Newport an equal number, and to Mayville her increase, and to other places theirs, and you at once give them the power to control the destinies of this state. Now, is this agricultural interest to be sacrificed—to be placed like the south, dependent on the north? It seems to me there should be some balance preserved, and engrafted upon the constitution. . . .

DEBATES IN THE OHIO CONSTITUTIONAL CONVENTION OF 1850–51 [1]

Early experiences with state participation in the building of highways, canals, and rail roads, resulted, particularly after the panic of 1837, in a widespread desire to have the state governments kept free from such entangling alliances. In a number of conventions held during this period there was some discussion of the proper functions of government and of the relation of government to trade and commerce. Usually the doctrine of *laissez-faire* was accepted by the speakers, but occasional speeches are to be found which illustrate some recognition in theory of the institutional changes in the direction of social regulation of many forms of activity which were already well started.

While the regulation of corporations was to become a more burning issue in the latter half of the century, the problem was discussed at some length and with considerable heat in several conventions before the Civil War. The unwise and even corrupt grant of charters by many of the legislatures and the attitude of the courts toward the standing of these charters, particularly in the Dartmouth College decision, gave rise to a popular distrust of corporations and to a desire to render the charters or franchises repealable. The second selection given below illustrates the theories advanced by those contending for and against a greater degree of popular or legislative control of corporations.

[331] "Sec. 16. The levying of taxes by the poll is grievous and oppressive, and the same shall not be done for state and county purposes."

Mr. Archbold moved to amend this section, by adding the following:

"Rightful government being an agency for the keeping of the peace, for the preservation of social order, and for the defence of society, taxation ought to be strictly confined to the promotion of these objects.

The taxation necessary to pay the agents employed in keeping the peace, and to promote social order by the good instruction of youth, is rightful and proper, and in accordance with the principles of the social contract.

But to levy taxes to carry on commercial enterprises, is an abuse of the taxing power, and a fraud on the social contrance. . . . "

[333] Mr. Archbold, said the principles of this amendment had already been much discussed. The object of the amendment is to declare the first principles of government. It is in substance, that government is an agent for the preservation of the peace and the protection of the citizens. It is said that a frequent recurrence to first principles is necessary. Now there is no doubt but

[1] *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio*, 1850–51, volume II. Columbus: S. Medary. 1851.

it is the feebleness of men, that drives them into society. Mr. Madison has said: "If men were angels, there would be no need of government." The real design of government is to constitute a judge, in order to prevent a resort to the club and the dagger, for the settlement of disputes. It is therefore because men are weak, immoral and imperfect, that they need the muniments which collectively they throw around each other.

Government is not organized for the purpose of entering into commercial speculations, and it would be as wrong for the state to enter into the manufacture of iron, as the building of canals or rail roads. The system of internal improvements must, in its very nature be unjust. This he looked upon as its only redeeming feature, because it would bring it to an end. To make it equal, would sink the treasury of the Indies—it would be a vast Serbonian bog, which would absorb the wealth of the world.

But he desired to call the attention of gentlemen to another feature in our social system. The view is this: that we provide for the moral purity of our government, by returning it to its original functions. The preservation of social order, is the duty of our state governments; and we are to consider one great feature—how cheap a government we can have. Brought to its real functions, our government would cost about one hundred and fifty thousand dollars per annum, now it is over two millions.

There is something morally sublime, in this endeavor to restore government to its original functions. Since 1825, the business of government has become inordinate, on account of the great interests the state has undertaken. The enormous patronage that has been the result of this system, has carried party spirit to a fearful height, and caused a broad stream of corruption to flow through the length and breadth of the land. We want to return to the pure and simple standard of seventy-six, and to take away these enormous encouragements to corruption. . . .

Mr. Nash said. I do not rise so much to argue the questions involved in this amendment, as to enter my protest against the truth of it. I am surprised to hear men saying this abstraction is true. I deny its truth. I pronounce it the essence of errors widespread and dangerous. This amendment asserts that there are but three legitimate objects for government interference, and hence for government taxation; and these are: First, to keep the peace; second, to promote social order; and third, to provide for

the public defence. This reduces government to a mere instrumentality, to keep the peace internally and externally. To preserve order, seems to comprehend the whole end and aim of government, according to this abstraction. Can government aspire to no higher function than that of a police officer? Has it no other duties to perform than to declare crimes and to punish them? Where are all the great interests of humanity, which are commanding so much of the attention of the present generation? What are your acts of emancipation, of education? Where are your colleges and academies, your whole machinery of education? Where is all your legislation restraining trades and practices which tend to corrupt public morals? Where are your laws looking to the improvement of the State in its means of intercourse and communication? By what authority are roads made, bridges constructed, railroads laid down? The gentleman's ideas of government are erroneous, entirely too restricted. If his theory be true, then the whole history of the world has been wrong. All your harbor and river improvements, all your State and county roads, all your canals and railroads, have been constructed directly in the teeth of the gentleman's theory, and directly against, and in violation of, natural right, as expounded by him.

Sir, government has a higher object. It not only exists to secure the ends alluded to here, but for other and higher ends. Its duties look to the great interests of humanity, to securing the means for the physical development of a country, so that labor may secure its highest rewards, and for the intellectual and moral improvement of a people. A government which does not regard the elevation of the individual and the masses above all other duties, fails to discharge its highest functions. To render a people great and happy, its soil must be highly improved, its agriculture and manufactures be encouraged, and its access to market be rendered easy and cheap; while the people themselves must be educated and moral. Now, this theory, here put forth, declares all these great interests without the pale of government action. Why, sir, this is keeping order and the peace, while the people may relapse into barbarism. If a portion of the people refuse to educate themselves and their children, refuse to improve the soil, and waste their energies in idleness, has government no power to require one and all to execute their duties, to cease from idleness, and educate themselves and their children? If not, then barbarism

is nearer the true theory of government than our boasted civilization has ever attained.

But this theory goes still farther; it cuts up by the roots all ameliorations and improvements. If government has no right to raise money to make a road, a canal, or a railroad, what right has it to pass laws empowering others to do what it has no right to do itself? The government can transfer to others no greater powers than it itself possesses; and as government cannot construct a railroad, it can by no act empower others to do it. Here, then, by this theory, the country is brought to a stand still, and every step of future progress is left to individual effort and enterprise. This, in my opinion, demonstrates the utter absurdity of the gentleman's proposition.

And yet, the gentleman claims that such taxes violate the SOCIAL COMPACT. Sir, I thought this theory of a social compact had come to be regarded as too absurd, for any one to think of again galvanizing it into vitality. The whole theory of a social contract is not only absurd; but absolutely blasphemous. It assumes that man is not born under law, under government. If he is not so born, how does he become a subject of government? He is never asked whether he will be under government, or not; whether he will submit to law or follow his own unbridled will. In point of fact, no one ever entered into such a compact.

Nay, more. What right have two men to make law for a third, if he chooses to deny their right, refuses to assent to it? If I am free to choose my own course of life, to say whether I will be in government or out of it, under law or out of it; why is it that in practice a majority can make a government and law to bind a minority?

Sir, the whole theory is wrong. It came from the infidel philosophy of Hobbes and his successors. It assumes that man is an *independent being*, at liberty to choose his own course of life, the law by which he will be governed; or that he may deny to be governed by any law at all. This is the idea of man which this philosophy assumes. But is this idea true in theory or fact? Is man an independent or dependent being? Is he born under law, a law from which he cannot emancipate himself; or is he born without law, free to settle his own code, free to come under its restraints, or not, just as he chooses?

Now, sir, government is a divine institution; not the invention

of man, but the appointment of God. Its existence pre-supposes a government and law under a government is a necessity. It exists independent of our will, and without our consent. Law lays its restraining hands upon us, from the moment we open our eyes upon this glorious earth, and it follows us on all the way to the grave-yard. And we can no more escape from its jurisdiction than we can escape from the earth we inhabit, or the air we breathe. Man is a dependent being, unable to exist a day without the kindness and aid of his fellows, and the protecting wisdom of his great Creator. If he would cease to be dependent, he must give up society, relapse into barbarism, live the life of isolation.

No, sir, Government is founded on no such weak and miserable device, as a *social compact*. It is of divine origin; not the invention of man—but the appointment of God. Its existence presupposes a government and a law, under and above, human government; a government and a law, which men ought to obey—but which they do not. As subjects of God's government, man has certain inalienable rights, of which human government cannot deprive him. It is because men violate these inalienable rights —will not be obedient to God's laws; it is in this fact, that arises the necessity for human government. There must be a power which can legally lay its hands upon the offender, and protect others from his lawlessness.

Hence, human governments cannot be permitted to set aside the laws of divinity, and interpose between man and his Maker. Whenever it does this, then is resistance to government, obedience to God. Here is the true foundation of all government; and how infinitely higher does it rise in our estimation, when we regard it in the true light! In the one case, we look only upon the cunning device of man; in the other, upon the ordination of God. In the one case, the administrators of government, are alone responsible to man; in the other, they are the servants of God, as well as of men, alike responsible to Him, as to them; but never can his responsibility to man, justify him in violating his duty to God. How do, also the functions of government become elevated! It is no longer a device for repressing disorder. It is, also, an instrument of amelioration co-operating with God himself, in bringing back this earth to its primeval beauty till it shall become a garden home for man, and man himself, to his original purity;

to that highest freedom, voluntary obedience to law. This attained, peace and good will, will once more become as universal as humanity.

Here, then, we find ample authority for all government acts, looking to the physical well being, and the moral and intellectual progress of humanity. When engaged in this duty, it is fulfilling the appointment of its divine Founder. . . .

[246] Mr. Case. . . . Look through all the writers upon public law, from Grotius to Wheaton, and Kent, and you will find no one that recognizes the right of a State to seize and appropriate the property of the citizen, without compensation.

Sir, there is not a heart that will not revolt at the idea that the State—that mere aggregation of power which men have created to establish justice and secure the blessings of liberty—may, in the wantonness of that power, lay its hands upon whatever of private property comes in its way, and appropriate it to its own use or destroy it, without giving to its proprietor the poor privilege of a hearing. Under such a law, a man may be worth fifty thousand dollars to-day, and to-morrow, by a mere act of the government, in which he has no agency, and of which he has no notice, be so poor that there would be none to do him reverence; precedents for it may be found in the worst days of Spanish rapacity, but not among enlightened States, except occasionally like that of the Stuarts, alluded to by the gentleman from Knox. To follow the example of the gentleman from Trumbull, (Mr. Ranney,) in putting extreme cases—we will place this franchise, the Maumee Bridge franchise if you please, worth fifty thousand dollars, in the hands of a widow. It is all she has. Upon its income she depends for her own support and the education of her children. She is independent and comfortable to-day. To-morrow, by a single act of the law-making power, her property is annihilated by a repeal of the charter, and she and her children are left to suffer all the evils of poverty and wretchedness. And this is to be done by the State of Ohio! God forbid, that we should ever set such an example. If such things are just in a State, why punish the highwayman for acts that differ only in magnitude?

It is plunder! nothing else. And the people would scorn such doctrine. It is not Democracy! Gentlemen may say what they please, about reading me out of the Democratic party. I will go for impartial and even handed justice to all—to the poor as well

as the rich—to the corporations as well as individuals. That is what I call Democracy! Justice! . . . .

[476] Mr. Mitchell. . . . In the "Bill of Rights," is the proper place to declare how far the Legislature can sell, or give away, the dearest and most essential rights of the people. It may well be asked, how a republican government, can confer upon one portion of its citizens, immunities, franchises or privileges, from which another portion are excluded? It cannot sir, I maintain, consistent with duty or principle. Nothing can be more proper or natural then, than that a provision *against* such inequalities—such anti-democratic grants, should be incorporated in the bill of rights.

Mr. Kennon. Does the gentleman from Knox admit, that the amendment, (Mr. Lawrence's,) now in debate, applies to the case of corporations?

Mr. Mitchell. . . . I understand the amendment in question, to declare broadly and unequivocally, the right of repeal—and when I say repeal, I mean unqualified repeal, retroactive, retrospective, prospective and present, conditioned only upon the exercise of the sound discretion of the people, through their legislature. . . .

Sir, I maintain, that it is not only the right, but the duty of Government, to repeal every charter—the exercise of which, is found to be injurious to the people, or the cause of justice and equality, in the community. I maintain, that the highest duty, that can be imposed upon an American Legislature, is to see, that our institutions are preserved pure and entire in their principles. The very charter of our institutions, necessarily confers this power upon the Legislature.

But this is the great and cardinal point of difference between us. These men affirm, that you can, by cunning and artifice, prompted by avarice, or lust of gain, obtain from the Legislature; an improvident grant, which they cannot nullify and reverse, they cannot remove the evil, until they have purchased the privilege so to do. This is an absurdity, the equal of which, I have never yet seen, or heard, in all my experience. . . .

Mr. Ranney. But my friend, [Judge Vance, of Butler county,] who has made this issue before the great jury of the country, asserts before his constituents, that he is one of the fast friends of repeal. But then, he says, you cannot take the property of a

corporation without paying for it. And so say we. But what would you pay for? is the question. We would pay for the property taken, in all cases, where the State took any. But would you pay for what the special privileges and immunities which the land conferred might be worth to the stockholders, if they were permitted to still go on and enjoy them? He says he would not. If gentlemen are content to occupy his ground, what objection can they have to this provision? Let us see, before we go any further, what it means and what it embraces. It affirms the right of the people, through the General Assembly, to alter, revoke, repeal, or abolish any grant or law conferring special privileges or immunities upon a portion of the people, which cannot be reasonably enjoyed by all. It does not command or require a revocation of any of these; but it affirms that the people, by their representatives, have the right to do it. In this "Bill of Rights" it affirms this right, as inherent in the people. When it shall be exercised, and how exercised, is left to those having the power to determine. Can any man say that he holds to the doctrine of repeal, and deny this? What is the extent of the right here affirmed? In the first place, it extends only to such "special privileges and immunities" as are conferred by law—it allows the law making power to have control over its own creations only. In the next place, it extends only to such as are conferred upon a portion of the people, and cannot be enjoyed by all. I have already said that it does not embrace everything that I desire, but it contains much that is valuable, and nothing that any man, laying any claims to respect for a popular government, ought to object to. Every law that we rely upon to protect us all in the enjoyment of our natural rights, may be altered or repealed at the pleasure of the Legislature. But laws conferring special privileges are too sacred to be touched! What is it that these gentlemen guard with such fidelity? Where are these special privileges that the government confers upon favored individuals, obtained? It has nothing of its own to give—it is itself but a pensioner upon the bounty of the people, and all that it can confer must be drawn, either directly or indirectly, from the proceeds of their industry. So insatiable is special privilege, that once fastened upon us, it is worse than the bloodsucker—it never gets its fill, and is never ready to let go, but constantly grasps for more. It has cursed the world, through all the generations that have passed. In one shape

or another, it has "fertilized the fields of the favored few, by the sweat of the poor man's brow;" and yet, in the republican State of Ohio, in what has been called the noon of the nineteenth century, men, and men professing to be Democrats, are contending that this monster ought not to be subjected to the power, and brought within the control, of a free people! That a part of the political power of the State, and the most odious part, may exist above them and beyond their control! But gentlemen see in this provision an assertion of the right of repeal. What is repeal? A repeal takes no property that belongs to the corporation. It barely terminates the use of a special privilege. It takes nothing but what is described in the language of the proposition itself—"special privileges or immunities," which have been conferred by law. It does not affect anything beyond this. Whatever legislative power has conferred, which proves to be injurious to the public interest, may be taken back again by the same legislative power, upon such just terms as a just people shall provide. The right to take private property is rightfully taken from the legislative power. The right to acquire and enjoy property was antecedent to all government, and it may exist without government. The office of government is to protect person and property, and not to invade the rights of either. And the natural rights of persons, whether they are associated or not, are the same. The right to acquire, defend, and enjoy private property, is an inherent natural right of every individual. It never has been proposed, by the Democratic party, or any member of it, that the Legislature should have the power, without a public necessity, and full compensation, to take away the property of individuals, whether in an associated or private capacity—never. But in every case they have held, that all private property ought to be protected as all other natural rights are, and ought to be protected by every just government. And the proposition which has been adopted by the Convention, and which it is now sought to get rid of by this motion to reconsider, affirms nothing to the contrary. It does not touch private property. There is not the most distant allusion to private property in it—no intimation that private property may be taken. It deals with those "exclusive privileges" alone, which are created by law for the benefit of some at the expense of others. It proposes to subject these to the power of their creator. And yet, men can go out to their constituents and proclaim them-

selves the advocates of the doctrine of repeal, and come here and help vote down such a provision as this! No matter how odious and unjust the privilege granted—no matter how much it invades the rights of the people—these men shrink from saying, that what was thus granted to a few, "without money and without price," can be reclaimed for the benefit of all. The rights of the people thus gone, are gone forever. But let us for a moment look at this provision in the light of the balance of this, my section, which has been unanimously passed. It reads thus: "All political power is inherent in the people. Government is instituted for their equal protection and benefit; and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary. . . ."

[867] Mr. Stanton. The article on corporations gives to the General Assembly the unconditional right of repeal, as to all corporations hereafter created. The created property and franchises are committed to the tender mercies of the party who may happen at any time to have a majority. Every corporation in the State may be struck out of existence at a single blow, and every dollar of property owned by them be confiscated. An unconditional and simple repeal of a charter not only destroys and takes away the franchise in which its whole capital may be invested; but its real estate reverts to the grantor, its personal property escheats to the State, its debtors are discharged from their debts, and its creditors lose their claims against it.

Whilst the constitution carefully guards private property, and forbids its being taken for public use without compensation to the owner, corporate property is left without the slightest protection upon the repeal of the charter.

And this same article makes every stockholder or owner of a share of stock in any corporation individually liable, not only for his original subscription, but for an additional sum, equal to the amount of his stock. These provisions cannot fail to deter many capitalists from investing their capital in corporations for internal improvements. . . .

It seems to me that this Convention has by what I cannot but regard as a usurpation of power struck a heavy blow at the guaranties designed to be thrown around us by this provision of the Constitution of the United States. Whether these provisions shall be sustained by the judicial tribunals of the country or not, the

moral force which the action of this convention will exert cannot fail in my judgment to be highly pernicious.

For these reasons I feel impelled by an imperative sense of duty to record my vote against the adoption of this Constitution. . . .

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CHAPTER VII

THE SLAVERY CONTROVERSY

INTRODUCTION

From early colonial times there existed in America some opposition to negro slavery. Religious and humanitarian movements, the equalitarian philosophy of the Revolution, and the unprofitable character of slavery in the northern states and in a large part of the south aided in spreading this anti-slavery sentiment. By 1787 slavery seemed well on the road to extinction or at least to isolation in the coastal region of South Carolina and Georgia when the cotton gin was invented and the growing of inland, short-staple cotton by slave labor made profitable. Within a few years the opening of the rich lands in the south west produced a great migration into the sections where slave labor could be applied with great success to the growing of such plantation crops as cotton, rice, and cane. Before the middle of the nineteenth century there was a solid tier of states, stretching from South Carolina to Texas, in which the dominant political group was firmly attached to the interests of the slave owners.

About the time that this development was reaching maturity the founding of the *Liberator* in Boston, with its gospel of immediate and complete abolition, and Nat Turner's slave rebellion in Virginia, in which over fifty whites were murdered, ushered in thirty years of passionate debate on the subject of slavery. Under Garrison's inspiration the tepid humanitarianism of the previously existing opposition to slavery was transformed into a crusade. At first the number of people fired with zeal for immediate abolition by any means, even those of violence, was very small. For many years the abolitionists were an unpopular, frequently a persecuted, minority in the north. Most of those who wished

to see the extinction of slavery desired that it be done gradually and with the consent of the slave owners. But these moderates lacked both the simple program and the highly emotionalized appeal of the abolitionists.

Furthermore, the southern reaction to the abolitionist movement made agreement upon a peaceable method of emancipation all the more difficult. Violent charges produced violent replies. The hatred and fear which came as a result of the attacks of the abolitionists, the slave rebellion, the presentation to Congress of petitions for abolition, John Brown's raid, and the struggle for the territories produced a state of mind which could not but lead to war. As a consequence of the situation slavery, after being considered an unavoidable evil by most southerners since the Revolution, became for a great many of them a positive good.

The importance of the slavery controversy in American history is too great and too obvious to need comment. It is also of much more than temporary significance in the development of American political thought. It produced the most searching debate which has yet taken place in America over one of the fundamental problems of political philosophy—the nature and justification of liberty and the relation of liberty to authority. Indeed, the debate had the singular characteristic of being limited almost entirely to this one problem, although its effects were felt in the discussion of other contemporary issues. The most important and most enduring by-product of the controversy was its influence upon the American theory of democracy. It is the slavery crusade to which we are in large part indebted for the moral or religious basis still attached to principles of equality and self-government in the United States. Democracy ceased to be a mere means and became an end, an end, moreover, which was both mystical and sacred in its nature, so that neither its actual existence nor its desirability were any longer open to doubt. Of course, the slavery controversy alone did not produce this attitude, but it did serve as the climax of a process of deification which had it origins far back in the past.

WILLIAM LLOYD GARRISON

Garrison was the most out-spoken and the most widely known of the radical abolitionists. The establishment of the *Liberator* marks the real beginning of the anti-slavery crusade. The Declaration of Sentiments of the American Anti-Slavery Convention was written by Garrison, and contains one of the best short statements of the arguments which he continued to put forward in spite of unpopularity and even persecution. These views, although accepted by very few people at the time, gained immensely in popularity during the next three decades.

DECLARATION OF PRINCIPLES FOR 'THE LIBERATOR' [1]

January 1, 1831

Assenting to the 'self-evident' truths maintained in the American Declaration of Independence, 'that all men are created equal, and endowed by their Creator with certain inalienable rights—among which are life, liberty, and the pursuit of happiness,' I shall strenuously contend for the immediate enfranchisement of our slave population. In Park Street Church, on the Fourth of July, 1829, in an address on slavery, I unreflectingly assented to the popular but pernicious doctrine of gradual abolition. I seize this opportunity to make a full and unequivocal recantation, and thus publicly to ask pardon of my God, of my country, and of my brethren, the poor slaves, for having uttered a sentiment so full of timidity, injustice and absurdity. A similar recantation, from my pen, was published in the 'Genius of Universal Emancipation,' at Baltimore, in September, 1829. My conscience is now satisfied.

I am aware, that many object to the severity of my language; but is there not cause for severity? I will be as harsh as truth, and as uncompromising as justice. On this subject, I do not wish to think, or speak, or write, with moderation. No! no! Tell a man, whose house is on fire, to give a moderate alarm; tell him to moderately rescue his wife from the hands of the ravisher; tell the mother to gradually extricate her babe from the fire into which it has fallen; but urge me not to use moderation in a cause like the present! I am in earnest. I will not equivocate—I will not excuse—I will not retreat a single inch—AND I WILL BE HEARD. . . .

[1] *Selections from the Writings and Speeches of William Lloyd Garrison.* Boston: R. F. Wallcut. 1852. Pp. 62–63.

DECLARATION OF SENTIMENTS OF THE AMERICAN ANTI-SLAVERY CONVENTION [1]

1833

The convention assembled in the city of Philadelphia, to organize a National Anti-Slavery Society, promptly seize the opportunity to promulgate the following Declaration of Sentiments, as cherished by them in relation to the enslavement of one-sixth portion of the American people.

More than fifty-seven years have elapsed, since a band of patriots convened in this place, to devise measures for the deliverance of this country from a foreign yoke. The corner-stone upon which they founded the Temple of Freedom was broadly this—'that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, LIBERTY, and the pursuit of happiness.' At the sound of their trumpet-call, three millions of people rose up as from the sleep of death, and rushed to the strife of blood; deeming it more glorious to die instantly as freemen, than desirable to live one hour as slaves. They were few in number—poor in resources; but the honest conviction that Truth, Justice and Right were on their side, made them invincible.

We have met together for the achievement of an enterprise, without which that of our fathers is incomplete; and which, for its magnitude, solemnity, and probable results upon the destiny of the world, as far transcends theirs as moral truth does physical force.

In purity of motive, in earnestness of zeal, in decision of purpose, in intrepidity of action, in steadfastness of faith, in sincerity of spirit, we would not be inferior to them.

Their principles led them to wage war against their oppressors, and to spill human blood like water, in order to be free. Ours forbid the doing of evil that good may come, and leads us to reject, and to entreat the oppressed to reject, the use of all carnal weapons for deliverance from bondage; relying solely upon those which are spiritual, and mighty through God to the pulling down of strong holds.

Their measures were physical resistance—the marshalling in

[1] *Selections from the Writings and Speeches of William Lloyd Garrison.* Pp. 66–70.

arms—the hostile array—the mortal encounter. Ours shall be such only as the opposition of moral purity to moral corruption—the destruction of error by the potency of truth—the overthrow of prejudice by the power of love—and the abolition of slavery by the spirit of repentance.

Their grievances, great as they were, were trifling in comparison with the wrongs and sufferings of those for whom we plead. Our fathers were never slaves—never bought and sold like cattle—never shut out from the light of knowledge and religion—never subjected to the lash of brutal taskmasters.

But those, for whose emancipation we are striving—constituting at the present time at least one-sixth part of our countrymen—are recognized by law, and treated by their fellow-beings, as marketable commodities, as goods and chattels, as brute beasts; are plundered daily of the fruits of their toil without redress; really enjoy no constitutional nor legal protection from licentious and murderous outrages upon their persons; and are ruthlessly torn asunder—the tender babe from the arms of its frantic mother—the heartbroken wife from her weeping husband—at the caprice or pleasure of irresponsible tyrants. For the crime of having a dark complexion, they suffer the pangs of hunger, the infliction of stripes, the ignominy of brutal servitude. They are kept in heathenish darkness by laws expressly enacted to make their instruction a criminal offence.

These are the prominent circumstances in the condition of more than two millions of our people, the proof of which may be found in thousands of indisputable facts, and in the laws of the slaveholding States.

Hence we maintain—that, in view of the civil and religious privileges of this nation, the guilt of its oppression is unequalled by any other on the face of the earth; and, therefore, that it is bound to repent instantly, to undo the heavy burdens, and to let the oppressed go free.

We further maintain—that no man has a right to enslave or imbrute his brother—to hold or acknowledge him, for one moment, as a piece of merchandise—to keep back his hire by fraud—or to brutalize his mind, by denying him the means of intellectual, social and moral improvement.

The right to enjoy liberty is inalienable. To invade it is to usurp the prerogative of Jehovah. Every man has a right to his

own body—to the products of his own labor—to the protection of law—and to the common advantages of society. It is piracy to buy or steal a native African, and subject him to servitude. Surely, the sin is as great to enslave an American as an African.

Therefore we believe and affirm—that there is no difference, in principle, between the African slave trade and American slavery:

That every American citizen, who detains a human being in involuntary bondage as his property, is, according to Scripture, (Ex. xxi, 16,) a man-stealer:

That the slaves ought instantly to be set free, and brought under the protection of law:

That if they had lived from the time of Pharaoh down to the present period, and had been entailed through successive generations, their right to be free could never have been alienated, but their claims would have constantly risen in solemnity:

That all those laws which are now in force, admitting the right of slavery, are therefore, before God, utterly null and void; being an audacious usurpation of the Divine prerogative, a daring infringement on the law of nature, a base overthrow of the very foundations of the social compact, a complete extinction of all the relations, endearments and obligations of mankind, and a presumptuous transgression of all the holy commandments; and that therefore they ought instantly to be abrogated.

We further believe and affirm—that all persons of color, who possess the qualifications which are demanded of others, ought to be admitted forthwith to the enjoyment of the same privileges, and the exercise of the same prerogatives, as others; and that the paths of preferment, of wealth, and of intelligence, should be opened as widely to them as to persons of a white complexion.

We maintain that no compensation should be given to the planters emancipating their slaves:

Because it would be a surrender of the great fundamental principle, that man cannot hold property in man:

Because slavery is a crime, and therefore is not an article to be sold:

Because the holders of slaves are not the just proprietors of what they claim; freeing the slave is not depriving them of property, but restoring it to its rightful owner; it is not wronging the master, but righting the slave—restoring him to himself:

Because immediate and general emancipation would only

destroy nominal, not real property; it would not amputate a limb or break a bone of the slaves, but by infusing motives into their breasts, would make them doubly valuable to the masters as free laborers; and

Because, if compensation is to be given at all, it should be given to the outraged and guiltless slaves, and not to those who have plundered and abused them.

We regard as delusive, cruel and dangerous, any scheme of expatriation which pretends to aid, either directly or indirectly, in the emancipation of the slaves, or to be a substitute for the immediate and total abolition of slavery.

We fully and unanimously recognise the sovereignty of each State, to legislate exclusively on the subject of the slavery which is tolerated within its limits; we concede that Congress, under the present national compact, has no right to interfere with any of the slave States, in relation to this momentous subject:

But we maintain that Congress has a right, and is solemnly bound, to suppress the domestic slave trade between the several States, and to abolish slavery in those portions of our territory which the Constitution has placed under its exclusive jurisdiction.

We also maintain that there are, at the present time, the highest obligations resting upon the people of the free States to remove slavery by moral and political action, as prescribed in the Constitution of the United States. They are now living under a pledge of their tremendous physical force, to fasten the galling fetters of tyranny upon the limbs of millions in the Southern States; they are liable to be called at any moment to suppress a general insurrection of the slaves; they authorize the slave owner to vote for three-fifths of his slaves as property, and thus enable him to perpetuate his oppression; they support a standing army at the South for its protection; and they seize the slave, who has escaped into their territories, and send him back to be tortured by an enraged master or a brutal driver. This relation to slavery is criminal, and full of danger: IT MUST BE BROKEN UP.

These are our views and principles—these our designs and measures. With entire confidence in the overruling justice of God, we plant ourselves upon the Declaration of our Independence and the truths of Divine Revelation, as upon the Everlasting Rock. . . .

WILLIAM ELLERY CHANNING

ESSAY ON SLAVERY [1]

1835

Channing was a Boston minister and one of the leaders in the Unitarian movement. In 1810, at the age of thirty, he began to preach and to write on social questions. He had become deeply interested in slavery during periods of residence in Richmond, Virginia and in the West Indies, and his *Essay* is perhaps the best example of the more temperate works written against slavery.

Introduction

Slavery ought to be discussed. We ought to think, feel, speak, and write about it. But whatever we do in regard to it should be done with a deep feeling of responsibility, and so done as not to put in jeopardy the peace of the Slave-holding States. On this point public opinion has not been and cannot be too strongly pronounced. Slavery, indeed, from its very nature, must be a ground of alarm wherever it exists. Slavery and security can by no device be joined together. But we may not, must not, by rashness and passion increase the peril. To instigate the slave to insurrection is a crime, for which no rebuke and no punishment can be too severe. This would be to involve slave and master in common ruin. It is not enough to say, that the Constitution is violated by any action endangering the slave-holding portion of our country. A higher law than the Constitution, forbids this unholy interference. Were our national union dissolved, we ought to reprobate, as sternly as we now do, the slightest manifestation of a disposition to stir up a servile war. Still more, were the Free and Slave-holding States not only separated, but engaged in the fiercest hostilities, the former would deserve the abhorrence of the world and the indignation of Heaven, were they to resort to insurrection and massacre as means of victory. Better were it for us to bare our own breasts to the knife of the slave, than to arm him with it against his master.

It is not by personal, direct action on the mind of the slave that we can do him good. Our concern is with the free. With the free we are to plead his cause. And this is peculiarly our duty,

[1] *The Works of William E. Channing.* Eleventh edition. Boston: George G. Channing. 1849. Vol. II.

because we have bound ourselves to resist his own efforts for his emancipation. We suffer him to do nothing for himself. The more, then, should be done for him. . . . As men, as Christians, as citizens, we have duties to the slave, as well as to every other member of the community. On this point we have no liberty. The eternal law binds us to take the side of the injured; and this law is peculiarly obligatory when we forbid him to lift an arm in his own defence. . . .

Chapter I. Property

The slave-holder claims the slave as his Property. The very idea of a slave is, that he belongs to another, that he is bound to live and labor for another, to be another's instrument, and to make another's will his habitual law, however adverse to his own. Another owns him, and, of course, has a right to his time and strength, a right to the fruits of his labor, a right to task him without his consent, and to determine the kind and duration of his toil, a right to confine him to any bounds, a right to extort the required work by stripes, a right, in a word, to use him as a tool, without contract, against his will, and in denial of his right to dispose of himself, or to use his power for his own good. . . .

Now this claim of property in a human being is altogether false, groundless. No such right of man in man can exist. A human being cannot be justly owned. To hold and treat him as property is to inflict a great wrong, to incur the guilt of oppression. . . .

A man cannot be seized and held as property, because he has Rights. What these rights are, whether few or many, or whether all men have the same, are questions for future discussion. All that is assumed now is, that every human being has *some* rights. This truth cannot be denied, but by denying to a portion of the race that moral nature which is the sure and only foundation of rights. This truth has never, I believe, been disputed. It is even recognised in the very codes of slave legislation, which, while they strip a man of liberty, affirm his right to life, and threaten his murderer with punishment. Now, I say, a being having rights cannot justly be made property; for this claim over him virtually annuls all his rights. It strips him of all power to assert them. It makes it a crime to assert them. The very essence of slavery is, to put a man defenceless into the hands of another. The right

claimed by the master, to task, to force, to imprison, to whip, and to punish the slave, at discretion, and especially to prevent the least resistance to his will, is a virtual denial and subversion of all the rights of the victim of his power. The two cannot stand together. Can we doubt which of them ought to fall?

Another argument against property is to be found in the Essential Equality of men. I know that this doctrine, so venerable in the eyes of our fathers, has lately been denied. Verbal logicians, have told us that men are "born equal" only in the sense of being equally born. They have asked whether all are equally tall, strong, or beautiful; or whether nature, Procrustes-like, reduces all her children to one standard of intellect and virtue. By such arguments it is attempted to set aside the principle of equality, on which the soundest moralists have reared the structure of social duty; and in these ways the old foundations of despotic power, which our fathers in their simplicity thought they had subverted, are laid again by their sons.

It is freely granted, that there are innumerable diversities among men; but be it remembered, they are ordained to bind men together, and not to subdue one to the other; ordained to give means and occasions of mutual aid, and to carry forward each and all, so that the good of all is equally intended in this distribution of various gifts. Be it also remembered, that these diversities among men are as nothing in comparison with the attributes in which they agree; and it is this which constitutes their essential equality. All men have the same rational nature and the same power of conscience, and all are equally made for definite improvement of these divine faculties, and for the happiness to be found in their virtuous use. Who, that comprehends these gifts, does not see that the diversities of the race vanish before them? Let it be added, that the natural advantages, which distinguish one man from another, are so bestowed as to counterbalance one another, and bestowed without regard to rank or condition in life. Whoever surpasses in one endowment is inferior in others. Even genius, the greatest gift, is found in union with strange infirmities, and often places its possessors below ordinary men in the conduct of life. Great learning is often put to shame by the mother-wit and keen good sense of uneducated men. Nature, indeed, pays no heed to birth or condition in bestowing her favors. The noblest spirits sometimes grow up in the obscurest spheres. Thus equal

are men; and among these equals, who can substantiate his claim to make others his property, his tools, the mere instruments of his private interest and gratification? Let this claim begin, and where will it stop? If one may assert it, why not all? Among these partakers of the same rational and moral nature, who can make good a right over others, which others may not establish over himself? Does he insist on superior strength of body or mind? Who of us has no superior in one or the other of these endowments? Is it sure that the slave or the slave's child may not surpass his master in intellectual energy, or in moral worth? Has nature conferred distinctions, which tell us plainly who shall be owners and who be owned? Who of us can unblushingly lift his head and say, that God has written "Master" there? or who can show the word "Slave" engraven on his brother's brow? The equality of nature makes slavery a wrong. Nature's seal is affixed to no instrument by which property in a single human being is conveyed. . . .

I come now to what is to my own mind the great argument against seizing and using a man as property. He cannot be property in the sight of God and justice, because he is a Rational, Moral, Immortal Being; because created in God's image, and therefore in the highest sense his child; because created to unfold godlike faculties, and to govern himself by a Divine Law written on his heart, and republished in God's Word. His whole nature forbids that he should be seized as property. From his very nature it follows, that so to seize him is to offer an insult to his Maker, and to inflict aggravated social wrong. Into every human being God has breathed an immortal spirit, more precious than the whole outward creation. No earthly or celestial language can exaggerate the worth of a human being. No matter how obscure his condition. Thought, Reason, Conscience, the capacity of Virtue, the capacity of Christian Love, an immortal Destiny, an intimate moral connection with God,—here are attributes of our common humanity which reduce to insignificance all outward distinctions, and make every human being unspeakably dear to his Maker. No matter how ignorant he may be. The capacity of Improvement allied him to the more instructed of his race, and places within his reach the knowledge and happiness of higher worlds. Every human being has in him the germ of the greatest idea in the universe, the idea of God; and to unfold this is the end of his existence. Every human being has in his breast the elements of

that Divine, Everlasting Law, which the highest orders of the creation obey. He has the idea of Duty; and to unfold, revere, obey this, is the very purpose for which life was given. Every human being has the idea of what is meant by that word, Truth; that is, he sees, however dimly, the great objects of Divine and created intelligence, and is capable of ever-enlarging perceptions of truth. Every human being has affections, which may be purified and expanded into a Sublime Love. He has, too, the idea of Happiness, and a thirst for it cannot be appeased. Such is our nature. Wherever we see a man, we see the possessor of these great capacities. Did God make such a being to be owned as a tree or a brute? How plainly was he made to exercise, unfold, improve his highest powers, made for a moral spiritual good! and how is he wronged, and his Creator opposed, when he is forced and broken into a tool to another's physical enjoyment!

Such a being was plainly made for an End in Himself. He is a Person, not a Thing. He is an End, not a mere Instrument or Means. He was made for his own virtue and happiness. Is this end reconcilable with his being held and used as a chattel? The sacrifice of such a being to another's will, to another's present, outward, ill-comprehended good, is the greatest violence which can be offered to any creature of God. It is to degrade him from his rank in the universe, to make him a means, not an end, to cast him out from God's spiritual family into the brutal herd.

Such a being was plainly made to obey a Law within Himself. This the essence of a moral being. He possesses, as a part of his nature, and the most essential part, a sense of Duty, which he is to reverence and follow, in opposition to all pleasure or pain, to all interfering human wills. The great purpose of all good education and discipline is, to make a man Master of Himself, to excite him to act from a principle in his own mind, to lead him to propose his own perfection as his supreme law and end. And is this highest purpose of man's nature to be reconciled with entire subjection to a foreign will, to an outward, overwhelming force, which is satisfied with nothing but complete submission?

The end of such a being as we have described, is, manifestly, Improvement. Now it is the fundamental law of our nature, that all our powers are to improve by free exertion. Action is the indispensable condition of progress to the intellect, conscience, and heart. Is it not plain, then, that a human being cannot, without

wrong, be owned by another, who claims, as proprietor, the right to repress the powers of his slaves, to withhold from them the means of development, to keep them within the limits which are necessary to contentment in chains, to shut out every ray of light and every generous sentiment, which may interfere with entire subjection to his will? . . .

Chapter II. Rights

I now proceed to the second division of the subject. I am to show, that man has sacred Rights, the gifts of God, and inseparable from human nature, which are violated by slavery. . . .

Man has rights by nature. The disposition of some to deride abstract rights, as if all rights were uncertain, mutable, and conceded by society, shows a lamentable ignorance of human nature. Whoever understands this must see in it an immovable foundation of rights. These are gifts of the Creator, bound up indissolubly with our moral constitution. In the order of things, they precede society, lie at its foundation, constitute man's capacity for it, and are the great objects of social institutions. The consciousness of rights, is not a creation of human art, a conventional sentiment, but essential to and inseparable from the human soul. . . .

The authority of the state to impose laws on its members I cheerfully allow; but this has limits, which are found to be more and more narrow in proportion to the progress of moral science. The state is equally restrained with individuals by the Moral Law. For example, it may not, must not, on any account, put an innocent man to death, or require of him a dishonorable or criminal service. It may demand allegiance, but only on the ground of the protection it affords. It may levy taxes, but only because it takes all property and all interests under its shield. It may pass only impartial ones, framed for the whole, and not for the few. It must not seize, by special act, the property of the humblest individual, without making him an equivalent. It must regard every man, over whom it extends its authority, as a vital part of itself, as entitled to its care and to its provisions for liberty and happiness. If, in an emergency, its safety, which is the interest of each and all, may demand the imposition of peculiar restraints on one or many, it is bound to limit these restrictions to the precise point which its safety prescribes, to remove the necessity of them as far and as fast as possible, to compensate by peculiar

protection such as it deprives of the ordinary means of protecting themselves, and, in general, to respect and provide for liberty in the very acts which for a time restrain it. The idea of Rights should be fundamental and supreme in civil institutions. Government becomes a nuisance and scourge, in proportion as it sacrifices these to the many or the few. Government, I repeat it, is equally bound with the individual by the Moral Law. The idea of Justice and Rectitude, of what is due to man from his fellow-creatures, of the claims of every moral being, are far deeper and more primitive than Civil Polity. Government, far from originating them, owes to them its strength. Right is older than human law. Law ought to be its voice. It should be built on, and should correspond to, the principle of justice in the human breast, and its weakness is owing to nothing more than to its clashing with our indestructible moral convictions.

That government is most perfect, in which Policy is most entirely subjected to Justice, or in which the supreme and constant aim is to secure the rights of every human being. This is the beautiful idea of a free government, and no government is free but in proportion as it realizes this. Liberty must not be confounded with popular institutions. A representative government may be as despotic as an absolute monarchy. In as far as it tramples on the rights, whether of many or one, it is a despotism. The sovereign power, whether wielded by a single hand or several hands, by a king or a congress, which spoils one human being of the immunities and privileges bestowed on him by God, is so far a tyranny. The great argument in favor of representative institutions is, that a people's rights are safest in their own hands, and should never be surrendered to an irresponsible power. Rights, Rights, lie at the foundation of a popular government; and when this betrays them, the wrong is more aggravated than when they are crushed by despotism.

Still the question will be asked, "Is not the General Good the supreme law of the state? Are not all restraints on the individual just, which this demands? When the rights of the individual clash with this, must they not yield? Do they not, indeed, cease to be rights? Must not every thing give place to the General Good?" I have started this question in various forms, because I deem it worthy of particular examination. Public and private morality, the freedom and safety of our national institutions, are

greatly concerned in settling the claims of the "General Good." In monarchies, the Divine Right of kings swallowed up all others. In republics, the General Good threatens the same evil. It is a shelter for the abuses and usurpations of government, for the profligacies of statesmen, for the vices of parties, for the wrongs of slavery. In considering this subject, I take the hazard of repeating principles already laid down; but this will be justified by the importance of reaching and determining the truth. Is the General Good, then, the supreme law, to which every thing must bow?

This question may be settled at once by proposing another. Suppose the public good to require, that a number of the members of a state, no matter how few, should perjure themselves, or should disclaim their faith in God and virtue. Would their right to follow conscience and God be annulled? Would they be bound to sin? Suppose a conqueror to menace a state with ruin, unless its members should insult their parents, and stain themselves with crimes at which nature revolts. Must the public good prevail over purity and our holiest affections? Do we not all feel that there are higher goods than even the safety of the state? that there is a higher law than that of mightiest empires? that the idea of Rectitude is deeper in human nature than that of private or public interest? and that this is to bear sway over all private and public acts?

The supreme law of a state is not its safety, its power, its prosperity, its affluence, the flourishing state of agriculture, commerce, and the arts. These objects, constituting what is commonly called the Public Good, are indeed proposed, and ought to be proposed, in the constitution and administration of states. But there is a higher law, even Virtue, Rectitude, the voice of Conscience, the Will of God. Justice is a greater good than property, not greater in degree, but in kind. Universal benevolence is infinitely superior to prosperity. Religion, the love of God, is worth incomparably more than all his outward gifts. A community, to secure or aggrandize itself, must never forsake the Right, the Holy, the Just. . . .

Chapter VI. Means of Removing Slavery

In this country no power but that of the Slave-holding States can remove the evil, and none of us are anxious to take the office from their hands. They alone can do it safely. They alone can

determine and apply the true and sure means of emancipation. That such means exist I cannot doubt; for emancipation has already been carried through successfully in other countries; and even were there no precedent, I should be sure, that, under God's benevolent and righteous government, there could not be a necessity for holding human beings in perpetual bondage. . . .

What, then, is to be done for the removal of slavery? In the first place, the great principle, that man cannot rightfully be held as property, should be admitted by the slave-holder. As to any public forms of setting forth this principle, they are of little or no moment, provided it be received into the minds and heart. The slave should be acknowledged as a partaker of a common nature, as having the essential rights of humanity. This great truth lies at the foundation of every wise plan for his relief. . . .

It may be asked, whether I intend that the slave should be immediately set free from all his present restraints. By no means. Nothing is farther from my thoughts. The slave cannot rightfully, and should not, be owned by the Individual. But, like every other citizen, he is subject to the community, and the community has a right and is bound to continue all such restraints, as its own safety and the well-being of the slave demand. It would be cruelty, not kindness, to the latter to give him a freedom, which he is unprepared to understand or enjoy. It would be cruelty to strike the fetters from a man, whose first steps would infallibly lead him to a precipice. The Slave should not have an owner, but he should have a guardian. He needs authority, to supply the lack of that discretion which he has not yet attained; but it should be the authority of a friend; an official authority, conferred by the state, and for which there should be responsibleness to the state; an authority especially designed to prepare its subjects for personal freedom. . . .

Chapter VII. Abolitionism

The Abolitionists have done wrong, I believe; nor is their wrong to be winked at, because done fanatically or with good intention; for how much mischief may be wrought with good design! They have fallen into the common error of enthusiasts, that of taking too narrow views, of feeling as if no evil existed but that which they opposed, and as if no guilt could be compared with that of countenancing or upholding it. . . . I doubt not that the ma-

jority of the Abolitionists condemn the coarseness and violence of which I complain. But in this, as in most associations, the many are represented and controlled by the few, and are made to sanction and become responsible for what they disapprove. . . .

The adoption of the common system of agitation by the Abolitionists has not been justified by success. From the beginning it created alarm in the considerate, and strengthened the sympathies of the Free States with the slave-holder. It made converts of a few individuals, but alienated multitudes. Its influence at the South has been almost wholly evil. It has stirred up bitter passions and a fierce fanaticism, which have shut every ear and every heart against its arguments and persuasions. These effects are more to be deplored, because the hope of freedom to the slave lies chiefly in the dispositions of his master. . . .

I earnestly desire that Abolitionism may lay aside the form of public agitation, and seek its end by wiser and milder means. I desire as earnestly, and more earnestly, that it may not be put down by Lawless Force. There is a worse evil than Abolitionism, and that is the suppression of it by lawless force. No evil greater than this can exist in the state, and this is never needed. Be it granted, that it is the design, or direct, palpable tendency of Abolitionism to stir up insurrection at the South, and that no existing laws can meet the exigency. It is the solemn duty of the chief magistrate of the state to assemble immediately the legislative bodies, and their duty immediately to apply the remedy of Law. Let every friend of freedom, let every good man lift up his voice against mobs. Through these lies our road to tyranny. . . .

HENRY DAVID THOREAU

CIVIL DISOBEDIENCE [1]

1849

Like nearly all of the New England group of writers Thoreau was strongly opposed to slavery. Unlike the others he carried his theory to the logical extreme implicit in the doctrine of a higher law. While many anti-slavery men wrote or talked vaguely of a law superior to the Constitution they rarely ventured to advocate disobedience to anything other than the fugitive slave law. Thoreau, less conventional in his way of life, and more rigorous in his reasoning, stopped only with the principles of philosophical anarchy.

I heartily accept the motto,—"That government is best which governs least;" and I should like to see it acted up to more rapidly and systematically. Carried out, it finally amounts to this, which also I believe,—"That government is best which governs not at all"; and when men are prepared for it, that will be the kind of government which they will have. Government is at best but an expedient; but most governments are usually, and all governments are sometimes, inexpedient. The objections which have been brought against a standing army, and they are many and weighty, and deserve to prevail, may also at last be brought against a standing government. The standing army is only an arm of the standing government. The government itself, which is only the mode which the people have chosen to execute their will, is equally liable to be abused and perverted before the people can act through it. Witness the present Mexican war, the work of comparatively a few individuals using the standing government as their tool; for, in the outset, the people would not have consented to this measure.

This American government,—what is it but a tradition, though a recent one, endeavoring to transmit itself unimpaired to posterity, but each instant losing some of its integrity? It has not the vitality and force of a single living man; for a single man can bend it to his will. It is a sort of wooden gun to the people themselves. But it is not the less necessary for this; for the people must have some complicated machinery or other, and hear its din, to satisfy that idea of government which they have. Govern-

[1] *The Writings of Henry David Thoreau;* Walden edition. Boston: Houghton Mifflin and Company. 1906. Vol. IV, pp. 356–87.

ments show thus how successfully men can be imposed on, even impose on themselves, for their own advantage. It is excellent, we must all allow. Yet this government never of itself furthered any enterprise, but by the alacrity with which it got out of its way. *It* does not keep the country free. *It* does not settle the West. *It* does not educate. The character inherent in the American people has done all that has been accomplished; and it would have done somewhat more, if the government had not sometimes got in its way. For government is an expedient by which men would fain succeed in letting one another alone; and, as has been said, when it is most expedient, the governed are most let alone by it. Trade and commerce, if they were not made of India-rubber, would never manage to bounce over the obstacles which legislators are continually putting in their way; and, if one were to judge these men wholly by the effects of their actions and not partly by their intentions, they would deserve to be classed and punished with those mischievous persons who put obstructions on the railroads.

But, to speak practically and as a citizen, unlike those who call themselves no-government men, I ask for, not at once no government, but *at once* a better government. Let every man make known what kind of government would command his respect, and that will be one step toward obtaining it.

After all, the practical reason why, when the power is once in the hands of the people, a majority are permitted, and for a long period continue, to rule, is not because they are most likely to be in the right, nor because this seems fairest to the minority, but because they are physically the strongest. But a government in which the majority rule in all cases cannot be based on justice, even as far as men understand it. Can there not be a government in which majorities do not virtually decide right and wrong, but conscience?—in which majorities decide only those questions to which the rule of expediency is applicable? Must the citizen ever for a moment, or in the least degree, resign his conscience to the legislator? Why has every man a conscience, then? I think that we should be men first, and subjects afterward. It is not desirable to cultivate a respect for the law, so much as for the right. The only obligation which I have a right to assume is to do at any time what I think right. It is truly enough said, that a corporation has no conscience; but a corporation of conscientious men is

a corporation *with* a conscience. Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice. A common and natural result of an undue respect for law is that you may see a file of soldiers, colonel, captain, corporal, privates, powder-monkeys, and all, marching in admirable order over hill and dale to the wars, against their wills, ay, against their common sense and consciences, which makes it very steep marching indeed, and produces a palpitation of the heart. They have no doubt that it is a damnable business in which they are concerned; they are all peaceably inclined. Now, what are they? Men at all? or small movable forts and magazines, at the service of some unscrupulous man in power? . . .

He who gives himself entirely to his fellow-men appears to them useless and selfish; but he who gives himself partially to them is pronounced a benefactor and philanthropist.

How does it become a man to behave toward this American government to-day? I answer, that he cannot without disgrace be associated with it. I cannot for an instant recognise that political organization as *my* government which is the *slave's* government also.

All men recognise the right of revolution; that is, the right to refuse allegiance to, and to resist, the government, when its tyranny or its inefficiency are great and unendurable. But almost all say that such is not the case now. But such was the case, they think, in the Revolution of '75. If one were to tell me that this was a bad government because it taxed certain foreign commodities brought to its ports, it is most probable that I should not make an ado about it, for I can do without them. All machines have their friction; and possibly this does enough good to counterbalance the evil. At any rate, it is a great evil to make a stir about it. But when the friction comes to have its machine, and oppression and robbery are organized, I say, let us not have such a machine any longer. In other words, when a sixth of the population of a nation which was undertaken to be the refuge of liberty are slaves, and a whole country is unjustly overrun and conquered by a foreign army, and subjected to military law, I think that it is not too soon for honest men to rebel and revolutionize. What makes this duty the more urgent is the fact, that the country so overrun is not our own, but ours is the invading army. . . .

. . . . Practically speaking, the opponents to a reform in Massachusetts are not a hundred thousand politicians at the South, but a hundred thousand merchants and farmers here, who are more interested in commerce and agriculture than they are in humanity, and are not prepared to do justice to the slave and to Mexico, *cost what it may*. I quarrel not with far-off foes, but with those who, near at home, co-operate with, and do the bidding of, those far away, and without whom the latter would be harmless. . . .

I do not hesitate to say, that those who call themselves Abolitionists should at once effectually withdraw their support, both in person and property, from the government of Massachusetts, and not wait till they constitute a majority of one, before they suffer the right to prevail through them. I think that it is enough if they have God on their side, without waiting for that other one. Moreover, any man more right than his neighbors constitutes a majority of one already. . . .

Under a government which imprisons any unjustly, the true place for a just man is also a prison. The proper place to-day, the only place which Massachusetts has provided for her freer and less desponding spirits, is in her prisons, to be put out and locked out of the State by her own act, as they have already put themselves out by their principles. . . . If any think that their influence would be lost there, and their voices no longer afflict the ear of the State, that they would not be as an enemy within its walls, they do not know by how much truth is stronger than error, nor how much more eloquently and effectively he can combat injustice who has experienced a little in his own person. Cast your whole vote, not a strip of paper merely, but your whole influence. A minority is powerless while it conforms to the majority; it is not even a minority then; but it is irresistible when it clogs by its whole weight. If the alternative is to keep all just men in prison, or give up war and slavery, the State will not hesitate which to choose. . . .

Thus the State never intentionally confronts a man's senses, intellectual or moral, but only his body, his senses. It is not armed with superior wit or honesty, but with superior physical strength. I was not born to be forced. I will breathe after my own fashion. Let us see who is the strongest. What force has a multitude? They only can force me who obey a higher law than I. They

force me to become like themselves. I do not hear of *men* being *forced* to live this way or that by masses of men. What sort of life were that to live? When I meet a government which says to me, "Your money or your life," why should I be in haste to give it my money? It may be in a great strait, and not know what to do: I cannot help that. It must help itself; do as I do. It is not worth the while to snivel about it. I am not responsible for the successful working of the machinery of society. I am not the son of the engineer. I perceive that, when an acorn and a chestnut fall side by side, the one does not remain inert to make way for the other, but both obey their own laws, and spring and grow and flourish as best they can, till one, perchance, overshadows and destroys the other. If a plant cannot live according to its nature, it dies, and so a man. . . .

However, the government does not concern me much, and I shall bestow the fewest possible thoughts on it. It is not many moments that I live under a government, even in this world. If a man is thought-free, fancy-free, imagination-free, that which *is not* never for a long time appearing *to be* to him, unwise rulers or reformers cannot fatally interrupt him.

I know that most men think differently from myself; but those whose lives are by profession devoted to the study of these or kindred subjects, content me as little as any. Statesmen and legislators, standing so completely within the institution, never distinctly and nakedly behold it. They speak of moving society, but have no resting-place without it. They may be men of a certain experience and discrimination, and have no doubt invented ingenious and even useful systems, for which we sincerely thank them; but all their wit and usefulness lie within certain not very wide limits. They are wont to forget that the world is not governed by policy and expediency. Webster never goes behind government, and so cannot speak with authority about it. His words are wisdom to those legislators who contemplate no essential reform in the existing government; but for thinkers, and those who legislate for all time, he never once glances at the subject. I know of those whose serene and wise speculations on this theme would soon reveal the limits of his mind's range and hospitality. Yet, compared with the cheap professions of most reformers, and the still cheaper wisdom and eloquence of politicians in general, his are almost the only sensible and valuable words,

and we thank Heaven for him. Comparatively, he is always strong, original, and, above all, practical. Still his quality is not wisdom but prudence. The lawyer's truth is not Truth, but consistency, or a consistent expediency. Truth is always in harmony with herself, and is not concerned chiefly to reveal the justice that may consist with wrong-doing. He well deserves to be called, as he has been called, the Defender of the Constitution. There are really no blows to be given by him but defensive ones. He is not a leader, but a follower. His leaders are the men of '87. "I have never made an effort," he says, "and never propose to make an effort; I have never countenanced an effort, and never mean to countenance an effort, to disturb the arrangement as originally made, by which the various States came into the Union." Still thinking of the sanction which the Constitution gives to slavery, he says, "Because it was a part of the original compact,—let it stand." Notwithstanding his special acuteness and ability, he is unable to take a fact out of its merely political relations, and behold it as it lies absolutely to be disposed of by the intellect,—what, for instance, it behooves a man to do here in America to-day with regard to slavery, but ventures, or is driven, to make some such desperate answer as the following, while professing to speak absolutely, and as a private man,—from which what new and singular code of social duties might be inferred? "The manner," says he, "in which the governments of those States where slavery exists are to regulate it, is for their own consideration, under their responsibility to their constituents, to the general laws of propriety, humanity, and justice, and to God. Associations formed elsewhere, springing from a feeling of humanity, or any other cause, have nothing whatever to do with it. They have never received any encouragement from me, and they never will."

They who know of no purer sources of truth, who have traced up its stream no higher, stand, and wisely stand, by the Bible and the Constitution, and drink at it there with reverence and humility; but they who behold where it comes trickling into this lake or that pool, gird up their loins once more, and continue their pilgrimage toward its fountain-head.

No man with a genius for legislation has appeared in America. They are rare in the history of the world. There are orators, politicians, and eloquent men, by the thousand; but the speaker has not yet opened his mouth to speak, who is capable of settling

the much-vexed questions of the day. We love eloquence for its own sake, and not for any truth which it may utter, or any heroism it may inspire. Our legislators have not yet learned the comparative value of free-trade and of freedom, of union, and of rectitude, to a nation. They have no genius or talent for comparatively humble questions of taxation and finance, commerce and manufactures and agriculture. If we were left solely to the wordy wit of legislators in Congress for our guidance, uncorrected by the seasonable experience and the effectual complaints of the people, America would not long retain her rank among the nations. For eighteen hundred years, though perchance I have no right to say it, the New Testament has been written; yet where is the legislator who has wisdom and practical talent enough to avail himself of the light which it sheds on the science of legislation?

The authority of government, even such as I am willing to submit to,—for I will cheerfully obey those who know and can do better than I, and in many things even those who neither know nor can do so well,—is still an impure one: to be strictly just, it must have the sanction and consent of the governed. It can have no pure right over my person and property but what I concede to it. The progress from an absolute to a limited monarchy, from a limited monarchy to a democracy, is a progress toward a true respect for the individual. Even the Chinese philosopher was wise enough to regard the individual as the basis of the empire. Is a democracy, such as we know it, the last improvement possible in government? Is it not possible to take a step further towards recognizing and organizing the rights of man? There will never be a really free and enlightened State, until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly. I please myself with imagining a State at last which can afford to be just to all men, and to treat the individual with respect as a neighbor; which even would not think it inconsistent with its own repose, if a few were to live aloof from it, not meddling with it, nor embraced by it, who fulfilled all the duties of neighbors and fellow-men. A State which bore this kind of fruit, and suffered it to drop off as fast as it ripened, would prepare the way for a still more perfect and glorious State, which also I have imagined, but not yet anywhere seen.

ABRAHAM LINCOLN

Lincoln was never an abolitionist. He did not consider slavery to be the only, or even the greatest evil confronting the American people. But he did express himself early in his public life as believing that "the institution of slavery is founded on both injustice and bad policy," and he desired to see it confined within the bounds of the existing slave states. The views which he expressed in the series of speeches between 1854 and 1858 are probably as near to representing the opinion of most northern leaders in the period immediately preceding the Civil War as are those of any other man.

SPEECH AT PEORIA [1]

October 16, 1854

[186] This declared indifference, but, as I must think, covert real zeal, for the spread of slavery, I cannot but hate. I hate it because of the monstrous injustice to slavery itself. I hate it because it deprives our republican example of its just influence in the world; enables the enemies of free institutions with plausibility to taunt us as hypocrites; causes the real friends of freedom to doubt our sincerity; and especially because it forces so many good men among ourselves into an open war with the very fundamental principles of civil liberty, criticizing the Declaration of Independence, and insisting that there is no right principle of action but self-interest.

Before proceeding let me say that I think I have no prejudice against the Southern people. They are just what we would be in their situation. If slavery did not now exist among them, they would not introduce it. If it did now exist among us, we should not instantly give it up. This I believe of the masses North and South. Doubtless there are individuals on both sides who would not hold slaves under any circumstances, and others who would gladly introduce slavery anew if it were out of existence. We know that some Southern men do free their slaves, go North and become tip-top Abolitionists, while some Northern ones go South and become most cruel slave-masters.

When Southern people tell us they are no more responsible for the origin of slavery than we are, I acknowledge the fact. When it is said that the institution exists, and that it is very difficult to

[1] *Complete Works of Abraham Lincoln.* Edited by Nicolay and Hay. 2 volumes. New York: Century Company. 1894. Vol. I.

get rid of it in any satisfactory way, I can understand and appreciate the saying. I surely will not blame them for not doing what I should not know how to do myself. If all earthly power were given me, I should not know what to do as to the existing institution. My first impulse would be to free all the slaves, and send them to Liberia, to their own native land. But a moment's reflection would convince me that whatever of high hope (as I think there is) there may be in this in the long run, its sudden execution is impossible. If they were all landed there in a day, they would all perish in the next ten days; and there are not surplus shipping and surplus money enough to carry them there in many times ten days. What then? Free them all, and keep them among us as underlings? Is it quite certain that this betters their condition? I think I would not hold one in slavery at any rate, yet the point is not clear enough for me to denounce people upon. What next? Free them, and make them politically and socially our equals. My own feelings will not admit of this, and if mine would, we well know that those of the great mass of whites will not. Whether this feeling accords with justice and sound judgment is not the sole question, if indeed it is any part of it. A universal feeling, whether well or ill founded, cannot be safely disregarded. We cannot then make them equals. It does seem to me that systems of gradual emancipation might be adopted, but for their tardiness in this I will not undertake to judge our brethren of the South.

When they remind us of their constitutional rights, I acknowledge them—not grudgingly, but fully and fairly; and I would give them any legislation for the reclaiming of their fugitives which should not in its stringency be more likely to carry a free man into slavery than our ordinary criminal laws are to hang an innocent one.

But all this, to my judgment, furnishes no more excuse for permitting slavery to go into our own free territory than it would for reviving the African slave-trade by law. The law which forbids the bringing of slaves from Africa, and that which has so long forbidden the taking of them into Nebraska, can hardly be distinguished on any moral principle, and the repeal of the former could find quite as plausible excuses as that of the latter. . . .

[195] But one great argument in support of the repeal of the Missouri Compromise is still to come. That argument is "the

sacred right of self-government." It seems our distinguished senator has found great difficulty in getting his antagonists, even in the Senate, to meet him fairly on this argument. Some poet has said:

Fools rush in where angels fear to tread.

At the hazard of being thought one of the fools of this quotation, I meet that argument—I rush in—I take that bull by the horns. I trust I understand and truly estimate the right of self-government. My faith in the proposition that each man should do precisely as he pleases with all which is exclusively his own lies at the foundation of the sense of justice there is in me. I extend the principle to communities of men as well as to individuals. I so extend it because it is politically wise, as well as naturally just: politically wise in saving us from broils about matters which do not concern us. Here, or at Washington, I would not trouble myself with the oyster laws of Virginia, or the cranberry laws of Indiana. The doctrine of self-government is right,—absolutely and eternally right,—but it has no just application as here attempted. Or perhaps I should rather say that whether it has such application depends upon whether a negro is not or is a man. If he is not a man, in that case he who is a man may as a matter of self-government do just what he pleases with him.

But if the negro is a man, is it not to that extent a total destruction of self-government to say that he too shall not govern himself. When the white man governs himself, that is self-government; but when he governs himself and also governs another man, that is more than self-government—that is despotism. If the negro is a man, why then my ancient faith teaches me that "all men are created equal," and that there can be no moral right in connection with one man's making a slave of another.

Judge Douglas frequently, with bitter irony and sarcasm, paraphrases our argument by saying: "The white people of Nebraska are good enough to govern themselves, but they are not good enough to govern a few miserable negroes!"

Well! I doubt not that the people of Nebraska are and will continue to be as good as the average of people elsewhere. I do not say the contrary. What I do say is that no man is good enough to govern another man without that other's consent. I say this is the leading principle, the sheet-anchor of American republicanism. . . .

[199] . . . . Nebraska is urged as a great Union-saving measure. Well, I too go for saving the Union. Much as I hate slavery, I would consent to the extension of it rather than see the Union dissolved, just as I would consent to any great evil to avoid a greater one. But when I go to Union-saving, I must believe, at least, that the means I employ have some adaptation to the end. To my mind, Nebraska has no such adaptation. . . .

SPEECH AT SPRINGFIELD[1]

June 27, 1857

[232] Chief Justice Taney, in his opinion in the Dred Scott case, admits that the language of the Declaration is broad enough to include the whole human family, but he and Judge Douglas argue that the authors of that instrument did not intend to include negroes, by the fact that they did not at once actually place them on an equality with the whites. Now this grave argument comes to just nothing at all, by the other fact that they did not at once, or ever afterward, actually place all white people on an equality with one another. And this is the staple argument of both the chief justice and the senator for doing this obvious violence to the plain, unmistakable language of the Declaration.

I think the authors of that notable instrument intended to include *all* men, but they did not intend to declare all men equal *in all respects*. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness in what respects they did consider all men created equal—equal with "certain inalienable rights, among which are life, liberty, and the pursuit of happiness." This they said, and this they meant. They did not mean to assert the obvious untruth that all were then actually enjoying that equality, nor yet that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right, so that enforcement of it might follow as fast as circumstances should permit.

They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained,

[1] *Complete Works*. Vol. I.

constantly approximated, and thereby constantly spreading and deepening its influence and augmenting the happiness and value of life to all people of all colors every where. The assertion that "all men are created equal" was of no practical use in effecting our separation from Great Britain; and it was placed in the Declaration not for that, but for future use. Its authors meant it to be—as, thank God, it is now proving itself—a stumbling block to all those who in after times might seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant when such should reappear in this fair land and commence their vocation, they should find left for them at least one hard nut to crack. . . .

SPEECH AT CHICAGO [1]

July 10, 1858

[253] Now in relation to his inference that I am in favor of a general consolidation of all the local institutions of the various States. I will attend to that for a little while, and try to inquire, if I can, how on earth it could be that any man could draw such an inference from anything I said. I have said very many times in Judge Douglas's hearing that no man believed more than I in the principle of self-government; that it lies at the bottom of all my ideas of just government from beginning to end. I have denied that his use of that term applies properly. But for the thing itself I deny that any man has ever gone ahead of me in his devotion to the principle, whatever he may have done in efficiency in advocating it. I think that I have said it in your hearing—that I believe each individual is naturally entitled to do as he pleases with himself and the fruit of his labor, so far as it in no wise interferes with any other man's rights; that each community, as a State, has a right to do exactly as it pleases with all the concerns within that State that interfere with the right of no other State; and that the General Government, upon principle, has no right to interfere with anything other than that general class of things that does not concern the whole. I have said that at all times. I have said as illustrations that I do not believe in the right of Illinois to interfere with the cranberry laws of Indiana, the oyster

[1] *Complete Works.* Vol. I.

laws of Virginia, or the liquor laws of Maine. I have said these things over and over again, and I repeat them here as my sentiments.

How is it, then, that Judge Douglas infers, because I hope to see slavery put where the public mind shall rest in the belief that it is in the course of ultimate extinction, that I am in favor of Illinois going over and interfering with the cranberry laws of Indiana? What can authorize him to draw any such inference? I suppose there might be one thing that at least enabled him to draw such an inference that would not be true with me or many others; that is, because he looks upon all this matter of slavery as an exceedingly little thing—this matter of keeping one sixth of the population of the whole nation in a state of oppression and tyranny unequaled in the world. He looks upon it as being an exceedingly little thing, only equal to the question of the cranberry laws of Indiana—as something having no moral question in it—as something on a par with the question of whether a man shall pasture his land with cattle or plant it with tobacco—so little and so small a thing that he concludes, if I could desire that anything should be done to bring about the ultimate extinction of that little thing, I must be in favor of bringing about an amalgamation of all the other little things in the Union. Now, it so happens—and there, I presume, is the foundation of this mistake—that the judge thinks thus; and it so happens that there is a vast portion of the American people that do not look upon that matter as being this very little thing. They look upon it as a vast moral evil; they can prove it as such by the writings of those who gave us the blessings of liberty which we enjoy, and that they so looked upon it, and not as an evil merely confining itself to the States where it is situated; and while we agree that, by the Constitution we assented to, in the States where it exists we have no right to interfere with it, because it is in the Constitution, we are by both duty and inclination to stick by that Constitution in all its letter and spirit from beginning to end. . . .

THOMAS R. DEW

REVIEW OF THE DEBATE IN THE VIRGINIA LEGISLATURE 1831–32 [1]

1833

Among the first writings which appeared in the south as a result of the abolitionist movement was this pamphlet by Professor Dew of William and Mary College. Much of his argument is economic in nature and helped to develop in the south a belief that its prosperity depended upon the continued existence of the slave system. The historical, classical, and scriptural defences of slavery soon became commonplaces of southern thought.

[293] . . . . We have heretofore doubted the propriety, even, of too frequently agitating, especially in a public manner, the question of abolition, in consequence of the injurious effects which might be produced on the slave population. But the Virginia Legislature, in its zeal for discussion, boldly set aside all prudential considerations of this kind, and openly and publicly debated the subject, before the world. The seal has now been broken—the example has been set from a high quarter; we shall, therefore, waive all considerations of a prudential character, which have hitherto restrained us, and boldly grapple with the abolitionists and this great question. We fear not the result, so far as truth, justice and expediency alone are concerned. But we must be permitted to say that we do most deeply dread the effects of misguided philanthropy, and the marked, and, we had like to have said, impertinent intrusion in this matter, of those who have no interest at stake, and who have not the intimate and minute knowledge of the whole subject, so absolutely necessary to wise action. . . :

[295] Slavery was established and sanctioned by divine authority, among even the elect of heaven, the favored children of Israel. Abraham, the founder of this interesting nation, and the chosen servant of the Lord, was the owner of *hundreds* of slaves. That magnificent shrine, the Temple of Solomon, was reared by the hands of slaves. Egypt's venerable and enduring piles were reared by similar hands. Slavery existed in Assyria and Babylon.

[1] *The Pro-Slavery Argument, as maintained by the most distinguished Writers of the Southern States.* . . . Philadelphia: Lippincott, Grambo, & Co. 1853.

The ten tribes of Israel were carried off in bondage to the former by Shalmanezar, and the two tribes of Judah were subsequently carried in triumph by Nebuchadenezzar, to beautify and adorn the latter. Ancient Phœnicia and Carthage had slaves. The Greeks and Trojans, at the siege of Troy, had slaves. Athens, and Sparta, and Thebes, indeed the whole Grecian and Roman worlds, had more slaves than freemen. And in those ages which succeeded the extinction of the Roman empire in the West, "*servi*, or slaves," says Dr. Robertson, "seem to have been the most numerous class." Even in this day of civilization, and the regeneration of governments, slavery is far from being confined to our hemisphere alone. The serf and labor rents prevalent throughout the whole of Eastern Europe, and a portion of Western Asia, and the ryot rents throughout the extensive and over populated countries of the East, and over the dominions of the Porte in Europe, Asia and Africa, but too conclusively mark the existence of slavery over these regions. And when we turn to the continent of Africa, we find slavery, in all its most horrid forms, existing throughout its whole extent, the slaves being at least three times more numerous than the freemen; so that, looking to the whole world, we may, even now, with confidence assert, that slaves, or those whose condition is infinitely worse, form by far the largest portion of the human race! . . .

[300] So soon as the private right to property is established, slavery commences; and with the institution of slavery, the cruelties of war begin to diminish. The chief finds it to his interest to make slaves of his captives, rather than put them to death. This system commences with the shepherd state, and is consummated in the agricultural. Slavery, therefore, seems to be the chief means of mitigating the horrors of war. Accordingly, wherever, among barbarous nations, they have so far advanced in civilization as to understand the use which may be made of captives, by converting them into slaves, there the cruelties of war are found to be lessened. . . .

[308] . . . . according to the law of nations—the strict *jus gentium*—we shall find all the writers agree in the justice of slavery, under certain circumstances. Grotius says that, as the law of nature permits prisoners of war to be killed, so the same law has introduced the right of making them slaves, that the captors, in view to the benefit arising from the labor or sale of their pris-

oners, might be induced to spare them. From the general practice of nations before the time of Puffendorf, he came to the conclusion that slavery has been established "by the free consent of the opposing parties." . . .

[325] *Advantages which have resulted to the world from the institution of slavery.*—When we turn our thoughts from this world "of imperfections" to the God of nature, we love to contemplate Him as perfect and immaculate, and amid all the divine attributes with which we delight to clothe Him, none stands more conspicuous than his *benevolence.* To look upon Him in this light, may be said to be almost the impulse of an instinct of our nature, and the most enlarged experience and perfect knowledge combine in fortifying and strengthening this belief. Accordingly, when we look abroad to the works of omnipotence, when we contemplate the external, the physical world, and again, when we turn to the world of mind, we never find *evil* the sole object and end of creation. *Happiness* is always the main design; evil is merely incidental. All the laws of matter, every principle, and even passion of man, when rightly understood, demonstrate the general benevolence of the Deity, even in this world. "It is, perhaps," says Mr. Allison, "the most striking and most luminous fact in the history of our intellectual nature, that that principle of curiosity which is the instinctive spring of all scientific inquiry into the phenomena of matter or mind, is never satisfied until it terminates in the discovery, not only of design, but of benevolent design." Well, then, might we have concluded, from the fact that slavery was the *necessary result of the laws of mind and matter, that it marked some benevolent design, and was intended by our Creator for some useful purpose.* Let us inquire, then, what that useful purpose is, and we have no hesitation in affirming that slavery has been, perhaps, the principal means for impelling forward the civilization of mankind. Without its agency, society must have remained sunk into that deplorable state of barbarism and wretchedness which characterized the inhabitants of the Western World, when first discovered by Columbus.

We have already spoken of the great advantage of slavery in mitigating the horrors of savage warfare; but not only is this most desirable effect produced, but it has a farther tendency to check the frequency of war, and to destroy that migratory spirit in nations and tribes, so destructive to the peace and tranquillity of the world. . . .

[461] *It has been contended that slavery is unfavorable to a republican spirit;* but the whole history of the world proves that this is far from being the case. In the ancient republics of Greece and Rome, where the spirit of liberty glowed with most intensity, the slaves were more numerous than the freemen. Aristotle, and the great men of antiquity, believed slavery necessary to keep alive the spirit of freedom. In Sparta, the freemen were even forbidden to perform the offices of slaves, lest he might lose the spirit of independence. In modern times, too, liberty has always been more ardently desired by slaveholding communities. "Such" says Burke, "were our Gothic ancestors; such, in our days, were the Poles; and such will be all masters of slaves who are not slaves themselves." "These people of the southern (American) colonies are much more strongly, and with a higher and more stubborn spirit, attached to liberty, than those of the northward." And from the time of Burke down to the present day, the Southern States have always borne the same honorable distinction. Burke says, "it is because freedom is to them not only an enjoyment, but a kind of rank and privilege." Another, and perhaps more efficient cause of this, is the perfect spirit of equality so prevalent among the whites of all the slaveholding States. Jack Cade, the English reformer, wished all mankind to be brought to one common level. We believe slavery in the United States has accomplished this, in regard to the whites, as nearly as can be expected or even desired in this world. The menial and low offices being all performed by the blacks, there is at once taken away the greatest cause of distinction and separation of the ranks of society. The man to the north will not shake hands familiarly with his servant, and converse, and laugh and dine with him, no matter how honest and respectable he may be. But go to the south, and you will find that no white man feels such inferiority of rank as to be unworthy of association with those around him. Color alone is here the badge of distinction, the true mark of aristocracy, and all who are white are equal in spite of the variety of occupation. . . .

JOHN C. CALHOUN

Calhoun, to a greater extent than any other southern leader, aided in developing a body of doctrine which justified the continued existence of slave society.

SPEECH ON THE RECEPTION OF THE ABOLITION PETITIONS, DELIVERED IN THE SENATE, FEBRUARY, 6th, 1837 [1]

. . . . We of the South will not, cannot surrender our institutions. To maintain the existing relations between the two races, inhabiting that section of the Union, is indispensable to the peace and happiness of both. It cannot be subverted without drenching the country in blood, and extirpating one or the other of the races. Be it good or bad, it has grown up with our society and institutions, and is so interwoven with them, that to destroy it would be to destroy us as a people. But let me not be understood as admitting, even by implication, that the existing relations between the two races in the slaveholding States is an evil:—far otherwise; I hold it to be a good, as it has thus far proved itself to be to both, and will continue to prove so if not disturbed by the fell spirit of abolition. I appeal to facts. Never before has the black race of Central Africa, from the dawn of history to the present day, attained a condition so civilized and so improved, not only physically, but morally and intellectually. It came among us in a low, degraded, and savage condition, and in the course of a few generations it has grown up under the fostering care of our institutions, reviled as they have been, to its present comparatively civilized condition. This, with the rapid increase of numbers, is conclusive proof of the general happiness of the race, in spite of all the exaggerated tales to the contrary.

In the mean time, the white or European race has not degenerated. It has kept pace with its brethren in other sections of the Union where slavery does not exist. It is odious to make comparison; but I appeal to all sides whether the South is not equal in virtue, intelligence, patriotism, courage, disinterestedness, and all the high qualities which adorn our nature. I ask whether we have not contributed our full share of talents and political wisdom in

[1] *The Works of John C. Calhoun;* edited by Richard K. Cralle. New York: D. Appleton and Company. 1853. Vol. II, pp. 630–33.

forming and sustaining this political fabric; and whether we have not constantly inclined most strongly to the side of liberty, and been the first to see and first to resist the encroachments of power. In one thing only are we inferior—the arts of gain; we acknowledge that we are less wealthy than the Northern section of this Union, but I trace this mainly to the fiscal action of this Government, which has extracted much from, and spent little among us. Had it been the reverse,—if the exaction had been from the other section, and the expenditure with us, this point of superiority would not be against us now, as it was not at the formation of this Government.

But I take higher grounds. I hold that in the present state of civilization, where two races of different origin, and distinguished by color, and other physical differences, as well as intellectual, are brought together, the relation now existing in the slaveholding States between the two, is, instead of an evil, a good—a positive good. I feel myself called upon to speak freely upon the subject where the honor and interests of those I represent are involved. I hold then, that there never has yet existed a wealthy and civilized society in which one portion of the community did not, in point of fact, live on the labor of the other. Broad and general as is this assertion, it is fully borne out by history. This is not the proper occasion, but if it were, it would not be difficult to trace the various devices by which the wealth of all civilized communities has been so unequally divided, and to show by what means so small a share has been allotted to those by whose labor it was produced, and so large a share given to the nonproducing classes. The devices are almost innumerable, from the brute force and gross superstition of ancient times, to the subtle and artful fiscal contrivances of modern. I might well challenge a comparison between them and the more direct, simple, and patriarchal mode by which the labor of the African race, is, among us, commanded by the European. I may say with truth, that in few countries so much is left to the share of the laborer, and so little exacted from him, or where there is more kind attention paid to him in sickness or infirmities of age. Compare his condition with the tenants of the poor houses in the more civilized portions of Europe—look at the sick, and the old and infirm slave, on one hand, in the midst of his family and friends, under the kind superintending care of his master and mistress, and compare it with the forlorn and wretched

condition of the pauper in the poor house. But I will not dwell on this aspect of the question; I turn to the political; and here I fearlessly assert that the existing relation between the two races in the South, against which these blind fanatics are waging war, forms the most solid and durable foundation on which to rear free and stable political institutions. It is useless to disguise the fact. There is and always has been in an advanced stage of wealth and civilization, a conflict between labor and capital. The condition of society in the South exempts us from the disorders and dangers resulting from this conflict; and which explains why it is that the political condition of the slave-holding States has been so much more stable and quiet than that of the North. The advantages of the former, in this respect, will become more and more manifest if left undisturbed by interference from without, as the country advances in wealth and numbers. We have, in fact, but just entered that condition of society where the strength and durability of our political institutions are to be tested; and I venture nothing in predicting that the experience of the next generation will fully test how vastly more favorable our condition of society is to that of other sections for free and stable institutions, provided we are not disturbed by the interference of others, or shall have sufficient intelligence and spirit to resist promptly and successfully such interference. It rests with ourselves to meet and repel them. I look not for aid to this Government, or to the other States; not but there are kind feelings towards us on the part of the great body of the non-slaveholding States; but as kind as their feelings may be, we may rest assured that no political party in those States will risk their ascendency for our safety. If we do not defend ourselves none will defend us; if we yield we will be more and more pressed as we recede; and if we submit we will be trampled under foot. Be assured that emancipation itself would not satisfy these fanatics:—that gained, the next step would be to raise the negroes to a social and political equality with the whites; and that being effected, we would soon find the present condition of the two races reversed. They and their northern allies would be the masters, and we the slaves; the condition of the white race in the British West India Islands, bad as it is, would be happiness to ours. There the mother country is interested in sustaining the supremacy of the European race. It is true that the authority of the former master is destroyed, but the African will there still be a

slave, not to individuals but to the community,—forced to labor, not by the authority of the overseer, but by the bayonet of the soldiery and the rod of the civil magistrate. . . .

REMARKS DURING A DEBATE IN THE SENATE ON RESOLUTIONS INTRODUCED BY CALHOUN AND DEALING WITH THE RIGHTS OF THE STATES AND THE ABOLITION OF SLAVERY, JANUARY 10th, 1838 [1]

This agitation has produced one happy effect, at least—it has compelled us of the South to look into the nature and character of this great institution, and to correct many false impressions that even we had entertained in relation to it. Many in the South once believed that it was a moral and political evil. That folly and delusion are gone. We see it now in its true light, and regard it as the most safe and stable basis for free institutions in the world. It is impossible with us that the conflict can take place between labor and capital, which makes it so difficult to establish and maintain free institutions in all wealthy and highly civilized nations where such institutions as ours do not exist. The Southern States are an aggregate, in fact, of communities, not of individuals. Every plantation is a little community, with the master at its head, who concentrates in himself the united interests of capital and labor, of which he is the common representative. These small communities aggregated make the State in all, whose action, labor, and capital is equally represented and perfectly harmonized. Hence the harmony, the union, and stability of that section, which is rarely disturbed, except through the action of this Government. The blessing of this state of things extends beyond the limits of the South. It makes that section the balance of the system; the great conservative power, which prevents other portions, less fortunately constituted, from rushing into conflict. In this tendency to conflict in the North, between labor and capital, which is constantly on the increase, the weight of the South has and will ever be found on the conservative side; against the aggression of one or the other side, whichever may tend to disturb the equilibrium of our political system. This is our natural posi-

[1] *The Works of John C. Calhoun*, vol. III, pp. 179–81.

tion, the salutary influence of which has thus far preserved, and will long continue to preserve our free institutions, if we should be left undisturbed. Such are the institutions, which these deluded madmen are stirring heaven and earth to destroy, and which we are called on to defend by the highest and most solemn obligations that can be imposed on us as men and patriots.

GEORGE FITZHUGH

SOCIOLOGY FOR THE SOUTH, OR, THE FAILURE OF FREE SOCIETY [1]

1854

Fitzhugh was a Virginian lawyer who wrote two books and a host of articles in which the argument for the slave system was carried into the enemy's territory. Not content with justifying the institutions of his own section, he denounced in no uncertain terms the underlying principles of free government and *laissez faire* economics.

[25] The first principles of the science of political economy inculcate separate, individual action, and are calculated to prevent that association of labor without which nothing great can be achieved; for man isolated and individualized is the most helpless of animals. We think this error of the economists proceeded from their adopting Locke's theory of the social contract. We believe no heresy in moral science has been more pregnant of mischief than this theory of Locke. It lies at the bottom of all moral speculations, and if false, must infect with falsehood all theories built on it. Some animals are by nature gregarious and associative. Of this class are men, ants and bees. An isolated man is almost as helpless and ridiculous as a bee setting up for himself. Man is born a member of society, and does not form society. Nature, as in the cases of bees and ants, has it ready formed for him. He and society are congenital. Society is the being—he one of the members of that being. He has no rights, whatever, as opposed to the interests of society; and society may very properly

[1] Richmond: A. Morris, 1854.

make any use of him that will redound to the public good. Whatever rights he has are subordinate to the good of the whole; and he has never ceded rights to it, for he was born its slave, and had no rights to cede.

Government is the creature of society, and may be said to derive its powers from the consent of the governed; but society does not owe its sovereign power to the separate consent, volition or agreement of its members. Like the hive, it is as much the work of nature as the individuals who compose it. Consequences, the very opposite of the doctrine of free trade, result from this doctrine of ours. It makes each society a band of brothers, working for the common good, instead of a bag of cats biting and worrying each other. The competitive system is a system of antagonism and war; ours of peace and fraternity. The first is the system of free society; the other that of slave society. The Greek, the Roman, Judaistic, Egyptian, and all ancient polities, were founded on our theory. The loftiest patrician in those days, valued himself not on selfish, cold individuality, but on being the most devoted servant of society and his country. In ancient times, the individual was considered nothing, the State everything. And yet, under this system, the noblest individuality was evolved that the world has ever seen. . . .

[27] The dissociation of labor and disintegration of society, which liberty and free competition occasion, is especially injurious to the poorer class; for besides the labor necessary to support the family, the poor man is burdened with the care of finding a home, and procuring employment, and attending to all domestic wants and concerns. Slavery relieves our slaves of these cares altogether, and slavery is a form, and the very best form, of socialism. In fact, the ordinary wages of common labor are insufficient to keep up separate domestic establishments for each of the poor, and association or starvation is in many cases inevitable. In free society, as well in Europe as in America, this is the accepted theory, and various schemes have been resorted to, all without success, to cure the evil. The association of labor properly carried out under a common head or ruler, would render labor more efficient, relieve the laborer of many of the cares of household affairs, and protect and support him in sickness and old age, besides preventing the too great reduction of wages by redundancy of labor and free competition. Slavery attains all these results. What else will?

[29] A maxim well calculated not only to retard the progress of civilization, but to occasion its retrogression, has grown out of the science of political economy. "The world is too much governed," has become quite an axiom with many politicians. Now the need of law and government is just in proportion to man's wealth and enlightenment. Barbarians and savages need and will submit to but few and simple laws, and little of government. The love of personal liberty and freedom from all restraint, are distinguishing traits of wild men and wild beasts. Our Anglo-Saxon ancestors loved personal liberty because they were barbarians, but they did not love it half so much as North American Indians or Bengal tigers, because they were not half so savage. As civilization advances, liberty recedes: and it is fortunate for man that he loses his love of liberty just as fast as he becomes moral and intellectual. The wealthy, virtuous and religious citizens of large towns enjoy less of liberty than any other persons whatever, and yet they are the most useful and rationally happy of all mankind. The best governed countries, and those which have prospered most, have always been distinguished for the number and stringency of their laws. Good men obey superior authority, the laws of God, of morality, and of their country; bad men love liberty and violate them. It would be difficult very often for the most ingenious casuist to distinguish between sin and liberty; for virtue consists in the performance of duty, and the obedience to that law or power that imposes duty, whilst sin is but the violation of duty and disobedience to such law and power. It is remarkable in this connection, that sin began by the desire for liberty and the attempt to attain it in the person of Satan and his fallen angels. The world wants good government and a plenty of it—not liberty. It is deceptive in us to boast of our Democracy, to assert the capacity of the people for self-government, and then refuse to them its exercise. In New England, and in all our large cities, where the people govern most, they are governed best. If government be not too much centralized, there is little danger of too much government. The danger and evil with us is of too little. Carlyle says of our institutions, that they are "anarchy plus a street constable." We ought not to be bandaged up too closely in our infancy, it might prevent growth and development; but the time is coming when we shall need more of government, if we would secure the permanency of our institutions.

[32] Hobbes maintains that "a state of nature is a state of war." This is untrue of a state of nature, because men are naturally associative; but it is true of a civilized state of universal liberty, and free competition, such as Hobbes saw around him, and which no doubt suggested his theory. The wants of man and his history alike prove that slavery has always been part of his social organization. A less degree of subjection is inadequate for the government and protection of great numbers of human beings.

[43] The Chartists and Radicals of England would in some way subvert and re-construct society. They complain of free competition as a crying evil, and may be classed with the Socialists. The high conservative party called Young England vainly endeavors, by preaching fine sentiments to produce that good feeling between the rich and the poor, the weak and the powerful, which slavery alone can bring about. Liberty places those classes in position of antagonism and war. Slavery identifies the interests of rich and poor, master and slave, and begets domestic affection on the one side, and loyalty and respect on the other. Young England sees clearly enough the character of the disease, but is not bold enough to propose an adequate remedy. The poor themselves are all practical Socialists, and in some degree pro-slavery men. They unite in strikes and trades unions, and thus exchange a part of their liberties in order to secure high and uniform wages. The exchange is a prudent and sensible one; but they who have bartered off liberty, are fast verging towards slavery. Slavery to an association is not always better than slavery to a single master. . . .

. . . . Strange to tell, in the free States of America too, Socialism and every other heresy that can be invoked to make war on existing institutions, prevail to an alarming extent. Even according to our own theory of the necessity of slavery, we should not suppose that that necessity would be so soon felt in a new and sparsely-settled country, where the supply of labor does not exceed the demand. But it is probable the constant arrival of emigrants makes the situation of the laborer at the North as precarious as in Europe, and produces a desire for some change that shall secure him employment and support at all times. Slavery alone can effect that change; and towards slavery the North and all Western Europe are unconsciously marching. The master evil

they all complain of is free competition—which is another name for liberty. Let them remove that evil, and they will find themselves slaves, with all of the advantages and disadvantages of slavery. They will have attained association of labor, for slavery produces association of labor, and is one of the ends all Communists and Socialists desire. A well-conducted farm in the South is a model of associated labor that Fourier might envy. . . .

[61] . . . . No association, no efficient combination of labor can be effected till men give up their liberty of action and subject themselves to a common despotic head or ruler. This is slavery, and towards this socialism is moving. . . .

[70] . . . . Our only quarrel with Socialism is, that it will not honestly admit that it owes its recent revival to the failure of universal liberty, and is seeking to bring about slavery again in some form.

The little experiment of universal liberty that has been tried for a little while in a little corner of Europe, has resulted in disastrous and appalling failure. Slavery has been too universal not to be necessary to nature, and man struggles in vain against nature. . . .

[86] But for the assaults of the abolitionists, much would have been done ere this to regulate and improve Southern slavery. Our negro mechanics do not work so hard, have many more privileges and holidays, and are better fed and clothed than field hands, and are yet more valuable to their masters. The slaves of the South are cheated of their rights by the purchase of Northern manufactures which they could produce. Besides, if we would employ our slaves in the coarser processes of the mechanic arts and manufactures, such as brick making, getting and hewing timber for ships and houses, iron mining and smelting, coal mining, grading railroads and plank roads, in the manufacture of cotton, tobacco, &c., we would find a vent in new employments for their increase, more humane and more profitable than the vent afforded by new states and territories. The nice and finishing processes of manufactures and mechanics should be reserved for the whites, who only are fitted for them, and thus, by diversifying pursuits and cutting off dependence on the North, we might benefit and advance the interests of our whole population. Exclusive agriculture has depressed and impoverished the South. . . . Free trade doctrines, not slavery, have made the South agricul-

tural and dependent, given her a sparse and ignorant population, ruined her cities, and expelled her people.

[175] An essay on the subject of slavery would be very imperfect, if it passed over without noticing these instruments [the Declaration of Independence and the Virginia Bill of Rights]. The abstract principles which they enunciate, we candidly admit, are wholly at war with slavery; we shall attempt to show that they are equally at war with all government, all subordination, all order. . . .

[177] The abstractions contained in the various instruments on which we professed, but professed falsely to found our governments, did no harm, because, until abolition arose, they remained a dead letter. . . .

[182] Nothing can be found in all history more unphilosophical, more presumptuous, more characteristic of the infidel philosophy of the 18th century, than the language that follows that of which we have been treating [that contained in the first part of the Declaration of Independence]. How any observant man, however unread, should have come to the conclusion, that society and government were such plastic, man-created things, that starting on certain general principles, he might frame them successfully as he pleased, we are at a loss to conceive. But infidelity is blind and foolish, and infidelity then prevailed. Lay your foundations of government on what principles you please, organize its powers in what form you choose, and you cannot forsee the results. You can only tell what laws, institutions and governments will effect, when you apply them to the same race or nation under the same circumstances in which they have already been tried. But philosophy then was in the chrysalis state. She has since deluged the world with blood, crime and pauperism. She has had full sway, and has inflicted much misery, and done no good. The world is beginning to be satisfied, that it is much safer and better to trust to experience, to follow nature, than to be guided by the ignis fatuus of *a priori* speculations of closet philosophers. . . .

[187] Institutions are what men can see, feel, venerate and understand. The institutions of Moses and Alfred remain to this day, those of Numa and Lycurgus had a long and flourishing life. These sages laid down no abstract propositions, founded their institutions on no general principles, had no written *constitutions*. They were wise from experience, adopted what history and ex-

perience had tested, and never trusted to *a priori* speculations, like a More, a Locke, a Jefferson, or an Abbe Sieyes. Constitutions should never be written till several centuries after governments have been instituted, for it requires that length of time to ascertain how institutions will operate. No matter how you define and limit, in words, the powers and duties of each department of government, they will each be sure to exercise as much power as possible, and to encroach to the utmost of their ability on the powers of other departments. When the Commons were invoked to Parliament, the king had no idea they would usurp the taxing powers; but having successfully done so, it became part of the English constitution, that the people alone could tax themselves. It was never intended that ninety-nine guilty should escape, sooner than one innocent man be punished; yet, finding that the result of the English judicial system, the judges and lawyers made a merit of necessity, and adopted it as a maxim of the common law. So, in a hundred instances we could show, that in England a constitution means the modus operandi of institutions, not prescribed, but ascertained from experience. In this country we shall soon have two constitutions, that *a priori* thing which nobody regards, and that practical constitution deduced from observation of the workings of our institutions.—Whigs disregard our written constitution, when banks, tariffs, or internal improvements are in question; Democrats respect it not when there is a chance to get more territory; and Young America, the dominant party of the day, will jump through its paper obstructions with as much dexterity as harlequin does through the hoop. State governments, and senators, and representatives, and militia, and cities, and churches, and colleges, and universities, and landed property, are institutions. Things of flesh and blood, that know their rights, "and knowing dare maintain them." We should cherish them. They will give permanence to government, and security to State Rights. But the abstract doctrines of nullification and secession, the general principles laid down in the Declaration of Independence, the Bill of Rights, and the Constitution of the United States, afford no protection of rights, no valid limitations of power, no security to State Rights. The power to construe them, is the power to nullify them. Mere paper guarantees, like the constitutions of Abbe Sieyes, are as worthless as the paper on which they are written.

Our institutions, founded on such generalities and abstractions as those of which we are treating, are like a splendid edifice built upon kegs of gunpowder. The abolitionists are trying to apply the match to the explosive materials under our Parliament House; we are endeavoring to anticipate them by drenching those materials with ridicule. No body deems them worth the trouble of argument, or the labor of removal. They will soon become incombustible and innocuous.

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CHAPTER VIII

THE STRUGGLE FOR STATE SOVEREIGNTY

INTRODUCTION

The relation of state and national powers has been one of the really persistent problems of American government. The Resolutions of the First Continental Congress, the conduct of the Revolution by the Second Continental Congress, the attempt of the Congress under the Articles of Confederation to levy an impost duty, the powers assigned to the central government by the Federal Convention of 1787, Hamilton's financial program, the Alien and Sedition Acts, certain decisions of the Supreme Court, the second war with England, the "tariff of abominations,"—these and many other measures have afforded grounds for protest by one or more states on the basis of the inherent or residual powers which they retain. At one time or another every state in the Union has opposed some action of the national government on the basis of its contravention of the rights reserved to the states by the Constitution. In other words the principle of state rights is by no means an exclusively southern doctrine. Rather is it a minority doctrine. Usually the south has been in the minority and has therefore resorted to the use of this principle more often than other parts of the nation, but there have been notable examples, as in the case of New England during the War of 1812, when the south was included in the majority and a minority in the north made use of the defensive theory most fully developed by southern writers.

In the great controversies where the theory of state sovereignty has played an important part the minority group has ordinarily been a section or a class rather than a state. But, since there is no similar constitutional basis for the defence

of sectional or class interests the framers of the group platform necessarily turn to the well worn principle of the "unsurrendered rights of the sovereign state." This is the case with the most important of all the state rights controversies, the one which led to secession and "the war for southern independence." It was not the states as such but rather the dominant class in a large section of the south which objected to the policies of the national government. The argument for state rights was merely the historico-legal justification for this opposition. But that does not mean that if, as some propose, the country were to be divided into great regions on the basis of economic and geographic lines rather than into the more or less artificial states, there would then be an end of particularistic aims and desires. The special form which has most frequently been used to defend local interests might or might not be changed, depending mainly upon the conditions under which the new system was framed and the relative amount of powers allocated to central and constituent governments. But it is at least possible that such a system would only serve to accentuate the causes of friction. It is the federal type of organization which makes this problem an ever-present one; so long as the federal division of powers lasts the issue of state rights will continue to be present. Since the United States was the first great modern state to experiment with federalism the problem of the territorial division of powers has played a much greater part in its history than in that of other modern states. But since about 1871 federal institutions have been introduced into a great many other states and the old issue of centralization versus decentralization is now a problem of importance in countries located in all parts of the world. In the United States there has long been a tendency toward centralization of powers, but this tendency is such a gradual one that the issue of state rights promises to be present for many years to come.

DANIEL WEBSTER

SECOND REPLY TO HAYNE[1]

1830

One of the most famous debates in the history of the United States is that which originated in Senator Foote's resolution concerning the restriction of public land sales and soon turned into a debate between north and south over the question of the right of the states to nullify acts of Congress on the grounds of unconstitutionality. It was in this debate that Webster of Massachusetts delivered the classic defence of union as against the growing menace of state rights. The speech is by some critics declared to be the greatest of American orations.

. . . . What he [Hayne] contends for is, that it is constitutional to interrupt the administration of the Constitution itself, in the hands of those who are chosen and sworn to administer it, by the direct interference, in form of law, of the States, in virtue of their sovereign capacity. The inherent right in the people to reform their government I do not deny; and they have another right, and that is, to resist unconstitutional laws, without overturning the government. It is no doctrine of mine that unconstitutional laws bind the people. The great question is, Whose prerogative is it to decide on the constitutionality or unconstitutionality of the laws? On that, the main debate hinges. The proposition, that, in case of a supposed violation of the Constitution by Congress, the States have a constitutional right to interfere and annul the law of Congress, is the proposition of the gentleman. I do not admit it. If the gentleman had intended no more than to assert the rights of revolution for justifiable cause, he would have said only what all agree to. But I cannot conceive that there can be a middle course, between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution or rebellion, on the other. I say, the right of a State to annul a law of Congress cannot be maintained, but on the ground of the inalienable right of man to resist oppression; that is to say, upon the ground of revolution. I admit that there is an ultimate violent remedy, above the Constitution and in defiance of the Constitution, which may be resorted to when a revolution is to be justified.

[1] *The Works of Daniel Webster*. Fourth Edition. Boston: Little, Brown and Company. 1853. Vol. III, pp. 320–41.

But I do not admit, that, under the Constitution and in conformity with it, there is any mode in which a State government, as a member of the Union, can interfere and stop the progress of the general government, by force of her own laws, under any circumstances whatever.

This leads us to inquire into the origin of this government and the source of its power. Whose agent is it? Is it the creature of the State legislature, or the creature of the people? If the government of the United States be the agent of the State governments, then they may control it, provided they can agree in the manner of controlling it; if it be the agent of the people, then the people alone can control it, restrain it, modify, or reform it. It is observable enough, that the doctrine for which the honorable gentleman contends leads him to the necessity of maintaining, not only that this general government is the creature of the States, but that it is the creature of each of the States severally, so that each may assert the power for itself of determining whether it acts within the limits of its authority. It is the servant of four-and-twenty masters, of different wills and different purposes, and yet bound to obey all. This absurdity (for it seems no less) arises from a misconception as to the origin of this government and its true character. It is, Sir, the people's Constitution, the people's government, made for the people, made by the people, and answerable to the people. The people of the United States have declared that this Constitution shall be the supreme law. We must either admit the proposition, or dispute their authority. The States are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the State legislatures, as political bodies, however sovereign, are yet not sovereign over the people. So far as the people have given power to the general government, so far the grant is unquestionably good, and the government holds of the people, and not of the State governments. We are all agents of the same supreme power, the people. The general government and the State governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary. The national government possesses those powers which it can be shown the people have conferred on it, and no more. All the rest belongs to the State governments, or to the people themselves. So far as the people have restrained State sovereignty, by

the expression of their will, in the Constitution of the United States, so far, it must be admitted, State sovereignty is effectually controlled. I do not contend that it is, or ought to be, controlled farther. The sentiment to which I have referred propounds that State sovereignty is only to be controlled by its own "feeling of justice"; that is to say, it is not to be controlled at all, for one who is to follow his own feelings is under no legal control. Now, however men may think this ought to be, the fact is, that the people of the United States have chosen to impose control on State sovereignties. There are those, doubtless, who wish they had been left without restraint; but the Constitution has ordered the matter differently. To make war, for instance, is an exercise of sovereignty; but the Constitution declares that no State shall make war. To coin money is another exercise of sovereign power; but no state is at liberty to coin money. Again, the Constitution says that no sovereign State shall be so sovereign as to make a treaty. These prohibitions, it must be confessed, are a control on the State sovereignty of South Carolina, as well as of the other States, which does not arise "from her own feelings of honorable justice." The opinion referred to, therefore, is in defiance of the plainest provisions of the Constitution. . . .

In Carolina, the tariff is a palpable, deliberate usurpation; Carolina, therefore, may nullify it, and refuse to pay the duties. In Pennsylvania, it is both clearly constitutional and highly expedient; and there the duties are to be paid. And yet we live under a government of uniform laws, and under a Constitution too, which contains an express provision, as it happens, that all duties shall be equal in all the States. Does not this approach absurdity?

If there be no power to settle such questions, independent of either of the States, is not the whole Union a rope of sand? Are we not thrown back again, precisely, upon the old Confederation?

It is too plain to be argued. Four-and-twenty interpreters of constitutional law, each with a power to decide for itself, and none with authority to bind any body else, and this constitutional law the only bond of their union? What is such a state of things but a mere connection during pleasure, or, to use the phraseology of the times, *during feeling?* And that feeling, too, not the feeling of the people, who established the Constitution, but the feeling of the State governments. . . .

I must now beg to ask, Sir, Whence is this supposed right of the States derived? Where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honorable gentleman maintains is a notion founded in a total misapprehension, in my judgement, of the origin of this government, and of the foundation on which it stands. I hold it to be a popular government, erected by the people; those who administer it, responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people, as the State governments. It is created for one purpose; the State governments for another. It has its own powers; they have theirs. There is no more authority with them to arrest the operation of a law of Congress, than with Congress to arrest the operation of their laws. We are here to administer a Constitution emanating immediately from the people, and trusted by them to our administration. It is not the creature of the State governments. It is of no moment to the argument, that certain acts of the State legislatures are necessary to fill our seats in this body. That is not one of their original State powers, a part of the sovereignty of the State. It is a duty which the people, by the Constitution itself, have imposed on the State legislatures; and which they might have left to be performed elsewhere, if they had seen fit. So they have left the choice of President with electors; but all this does not affect the proposition that this whole government, President, Senate, and House of Representatives, is a popular government. It leaves it still all its popular character. The governor of a State (in some of the States) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of performing among other duties, that of electing a governor. Is the government of the State, on that account, not a popular government? This government, Sir, is the independent offspring of the popular will. It is not the creature of the State legislatures; nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on State sovereignties. The States cannot now make war; they cannot contract alliances; they cannot make, each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this Constitution, Sir, be the creature of State

legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

The people, then, Sir, erected this government. They gave it a Constitution, and in that Constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are not granted; and all others, they declare, are reserved to the States or the people. But, Sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear, as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who, then, shall construe this grant of the people? Who shall interpret their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the government? Sir, they have settled all this in the fullest manner. They have left it with the government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole Constitution was framed and adopted, was to establish a government that should not be obliged to act through State agency, or depend on State opinion and State discretion. The people had had quite enough of that kind of government under the Confederation. Under that system, the legal action, the application of law to individuals, belonged exclusively to the States. Congress could only recommend; their acts were not of binding force, till the States had adopted and sanctioned them. Are we in that condition still? Are we yet at the mercy of State discretion and State construction? Sir, if we are, then vain will be our attempt to maintain the Constitution under which we sit.

But, Sir, the people have wisely provided, in the Constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are in the Constitution grants of powers to Congress, and restrictions on these powers. There are, also, prohibitions on the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The Constitution has itself pointed out, ordained, and established that authority. How has it accomplished this great and essential end? By declaring, Sir, that "*the Constitution, and the laws of the United States made in pursuance thereof, shall be the*

supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding."

This, Sir, was the first great step. By this the supremacy of the Constitution and laws of the United States is declared. The people so will it. No State law is to be valid which comes in conflict with the Constitution, or any law of the United States passed in pursuance of it. But who shall decide this question of interference? To whom lies the last appeal? This, Sir, the Constitution itself decides also, by declaring, "*that the judicial power shall extend to all cases arising under the Constitution and laws of the United States.*" These two provisions cover the whole ground. They are, in truth, the keystone of the arch! With these it is a government; without them it is a confederation. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the Supreme Court. It then, Sir, became a government. It then had the means of self-protection; and but for this, it would, in all probability, have been now among things which are past. Having constituted the government, and declared its powers, the people have further said, that, since somebody must decide on the extent of these powers, the government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, Sir, I repeat, how is it that a State legislature acquires any power to interfere? Who, or what, gives them the right to say to the people, "We, who are your agents and servants for one purpose, will undertake to decide, that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them!" The reply would be, I think, not impertinent,—"Who made you a judge over another's servants? To their own masters they stand or fall."

Sir, I deny this power of State legislatures altogether. It cannot stand the test of examination. Gentlemen may say, that, in extreme case, a State government might protect the people from intolerable oppression. Sir, in such a case, the people might protect themselves, without the aid of the State governments. Such a case warrants revolution. . . .

To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the

government by forced or unfair construction. I admit that it is a government of strictly limited powers; of enumerated, specified, and particularized powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet, in some cases, admit of doubt; and the general government would be good for nothing, it would be incapable of long existing, if some mode had not been provided in which those doubts, as they should arise, might be peaceably, but authoritatively, solved. . . .

The honorable gentleman argues, that if this government be the sole judge of the extent of its own powers, whether that right of judging be in Congress or the Supreme Court, it equally subverts State sovereignty. This the gentleman sees, or thinks he sees, although he cannot perceive how the right of judging, in this matter, if left to the exercise of State legislatures, has any tendency to subvert the government of the Union. The gentleman's opinion may be, that the right *ought not* to have been lodged with the general government; he may like better such a constitution as we should have under the right of State interference; but I ask him to meet me on the plain matter of fact. I ask him to meet me on the Constitution itself. I ask him if the power is not found there, clearly and visibly found there?

But, Sir, what is this danger, and what are the grounds of it? Let it be remembered, that the Constitution of the United States is not unalterable. It is to continue in its present form no longer than the people who established it shall choose to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power between the State governments and the general government, they can alter that distribution at will.

If anything be found in the national Constitution, either by original provision or subsequent interpretation, which ought not to be in it, the people know how to get rid of it. If any construction, unacceptable to them, be established, so as to become practically a part of the Constitution, they will amend it, at their own sovereign pleasure. But while the people choose to maintain it as it is, while they are satisfied with it, and refuse to change it, who has given, or who can give to the State legislature a right to alter it, either by interference, construction, or otherwise? Gentlemen do not seem to recollect that the people have any power

to do any thing for themselves. They imagine there is no safety for them, any longer than they are under the close guardianship of the State legislatures. Sir, the people have not trusted their safety, in regard to the general Constitution, to these hands. They have required other security, and taken other bonds. They have chosen to trust themselves, first, to the plain words of the instrument, and to such construction as the government themselves, in doubtful cases, should put on their own powers, under their oaths of office, and subject to their responsibility to them; just as the people of a State trust their own State governments with a similar power. Secondly, they have reposed their trust in the efficacy of frequent elections, and in their own power to remove their own servants and agents whenever they see cause. Thirdly, they have reposed trust in the judicial power, which, in order that it might be trustworthy, they have made as respectable, as disinterested, and as independent as was practicable. Fourthly, they have seen fit to rely, in case of necessity, or high expediency, on their known and admitted power to alter or amend the Constitution, peaceably and quietly, whenever experience shall point out defects or imperfections. And, finally, the people of the United States have at no time, in no way, directly or indirectly, authorized any State legislature to construe or interpret *their* high instrument of government; much less, to interfere, by their own power, to arrest its course and operation.

If, Sir, the people in these respects had done otherwise than they have done, their constitution could neither have been preserved, nor would it have been worth preserving. And if its plain provisions shall now be disregarded, and these new doctrines interpolated in it, it will become as feeble and helpless a being as its enemies, whether early or more recent, could possibly desire. It will exist in every State but as a poor dependent on State permission. It must borrow leave to be; and will be, no longer than State pleasure, or State discretion, sees fit to grant the indulgence, and to prolong its poor existence.

But, Sir, although there are fears, there are hopes also. The people have preserved this, their own chosen Constitution, for forty years, and have seen their happiness, prosperity, and renown grow with its growth, and strengthen with its strength. They are now, generally, strongly attached to it. Overthrown by direct assault, it cannot be; evaded, undermined, NULLIFIED, it

will not be, if we, and those who shall succeed us here, as agents and representatives of the people, shall conscientiously and vigilantly discharge the two great branches of our public trust, faithfully to preserve, and wisely to administer it. . . .

JOSEPH STORY

COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES [1]

1833

Story, appointed to the Supreme Court by President Madison, was second only to Marshall in the work of that court during the greatest period of its history. His *Commentaries on the Constitution* was prepared mainly for lecture purposes at the Harvard Law School, where he was Dane Professor of Law from 1829 until his death in 1845.

§ 210. Now it is apparent, that none of the colonies before the Revolution were, in the most large and general sense, independent, or sovereign communities. They were all originally settled under, and subjected to the British crown. Their powers and authorities were derived from, and limited by their respective charters. . . . So far, as respects foreign states, the colonies were not, in the sense of the laws of nations, sovereign states; but mere dependencies of Great Britain. They could make no treaty, declare no war, send no ambassadors, regulate no intercourse or commerce, nor in any other shape act, as sovereigns, in the negociations usual between independent states. In respect to each other, they stood in the common relation of British subjects; the legislation of neither could be controlled by any other; but there was a common subjection to the British crown. If in any sense they might claim the attributes of sovereignty, it was only in that subordinate sense, to which we have alluded, as exercising within a limited extent certain usual powers of sovereignty. . . .

[1] *Commentaries on the Constitution of the United States; with a Preliminary Review of the Constitutional History of the Colonies and States, before the Adoption of the Constitution.* By Joseph Story. In three volumes. Boston: Hilliard, Gray, and Company. Cambridge: Brown, Shattuck, and Co. 1833. Vol. I.

§ 211. . . . . the declaration of independence of all the colonies was the united act of all. It was "a declaration by the representatives of the United States of America in congress assembled;" "by the delegates appointed by the good people of the colonies," as in a prior declaration of rights they were called. It was not an act done by the state governments then organized; nor by persons chosen by them. It was emphatically the act of the whole *people* of the united colonies, by the instrumentality of their representatives, chosen for that, among other purposes. It was an act not competent to the state governments, or any of them, as organized under their charters, to adopt. Those charters neither contemplated the case, nor provided for it. It was an act of original, inherent sovereignty by the people themselves, resulting from their right to change the form of government, and to institute a new government, whenever necessary for their safety and happiness. So the declaration of independence treats it. No state had presumed of itself to form a new government, or to provide for the exigencies of the times, without consulting congress on the subject; and when they acted, it was in pursuance of the recommendation of congress. It was, therefore, the achievement of the whole for the benefit of the whole. The people of the united colonies made the united colonies free and independent states, and absolved them from all allegiance to the British crown. . . .

§ 215. From the moment of the declaration of independence, if not for most purposes at an antecedent period, the united colonies must be considered as being a nation *de facto*, having a general government over it created, and acting by the general consent of the people of all the colonies. The powers of that government were not, and indeed could not be well defined. But still its exclusive sovereignty, in many cases, was firmly established; and its controlling power over the states was in most, if not in all national measures, universally admitted. . . .

§ 243. Any survey, however slight, of the [articles of] confederation will impress the mind with the intrinsic difficulties, which attended the formation of its principal features. . . .

§ 244. But that, which strikes us with most force, is the unceasing jealousy and watchfulness everywhere betrayed in respect to the powers to be confided to the general government. . . . They found themselves, after having assembled a general congress for mutual advice and encouragement, compelled by the

course of events to clothe that body with sovereign powers in the most irregular and summary manner, and to permit them to assert the general prerogatives of peace and war, without any previous compact, and sanctioned only by the silent acquiescence of the people. Under such circumstances each state felt, that it was the true path of safety to retain all sovereign powers within its own control, the surrender of which was not clearly seen, under existing circumstances, to be demanded by an imperious public necessity.

§ 245. Notwithstanding the declaration of the articles, that the union of the states was to be perpetual, an examination of the powers confided to the general government would easily satisfy us, that they looked principally to the existing revolutionary state of things. The principal powers respected the operations of war, and would be dormant in times of peace. In short, congress in peace was possessed of but a delusive and shadowy sovereignty, with little more, than the empty pageantry of office. . . .

§ 310. It has been asserted by a learned commentator,[2] that the constitution of the United States is an original, written, federal, and social compact, freely, voluntarily, and solemnly entered into by the several states, and ratified by the people thereof respectively; whereby the several states, and the people thereof, respectively have bound themselves to each other, and to the federal government of the United States, and by which the federal government is bound to the several states and to every citizen of the United States. The author proceeds to expound every part of this definition at large. It is (says he) a compact, by which it is distinguished from a charter or grant, which is either the act of a superior to an inferior, or is founded upon some consideration moving from one of the parties to the other, and operates as an exchange or sale. But here the contracting parties, whether considered as states in their political capacity and character, or as individuals, are all equal; nor is there anything granted from one to another; but each stipulates to part with, and receive the same thing precisely without any distinction or difference between any of the parties.

§ 321. The obvious deductions, which may be, and indeed have been, drawn from considering the constitution as a compact between the states, are, that it operates as a mere treaty, or con-

[2] 1 Tucker's Blackstone's Commentaries, Appendix, note D, p. 140 et seq.

vention between them, and has an obligatory force upon each state no longer, than suits its pleasure, or its consent continues; that each state has a right to judge for itself in relation to the nature, extent, and obligations of the instrument, without being at all bound by the interpretation of the federal government, or by that of any other state; and that each retains the power to withdraw from the confederacy and to dissolve the connexion, when such shall be its choice; and may suspend the operations of the federal government, and nullify its acts within its own territorial limits, whenever, in its own opinion, the exigency of the case may require. These conclusions may not always be avowed; but they flow naturally from the doctrines, which we have under consideration. They go to the extent of reducing the government to a mere confederacy during pleasure; and of thus presenting the extraordinary spectacle of a nation existing only at the will of each of its constituent parts.

§ 322. If this be the true interpretation of the instrument, it has wholly failed to express the intentions of its framers, and brings back, or at least may bring back, upon us all the evils of the old confederation, from which we were supposed to have had a safe deliverence. For the power to operate upon individuals, instead of operating merely on states, is of little consequence, though yielded by the constitution, if that power is to depend for its exercise upon the continual consent of all the members upon every emergency. We have already seen, that the framers of the instrument contemplated no such dependence. . . .

§ 339. A constitution is in fact a fundamental law or basis of government, and falls strictly within the definition of law, as given by Mr. Justice Blackstone. It is a rule of action, prescribed by the supreme power in a state, regulating the rights and duties of the whole community. It is a *rule*, as contradistinguished from a temporary or sudden order; permanent, uniform, and universal. It is also called a rule, to distinguish it from a compact, or agreement; for a compact (he adds) is a promise proceeding from us; law is a command directed to us. The language of a compact is, I will, or will not do this; that of a law is, Thou shalt, or shalt not do it. "In compacts we ourselves determine and promise, what shall be done, before we are obliged to do it. In laws, we are obliged to act without ourselves determining, or promising any thing at all." It is a rule prescribed; that is, it is laid down, pro-

mulgated, and established. It is prescribed by the supreme power in a state, that is, among us, by the people, or a majority of them in their original sovereign capacity. Like the ordinary municipal laws, it may be founded upon our consent, or that of our representatives; but it derives its ultimate obligatory force, as a *law*, and not as a compact.

§ 340. And it is in this light, that the language of the constitution of the United States manifestly contemplates it; for it declares (article 6th), that this constitution and the laws, &c. and treaties made under the authority of the United States, "shall be the supreme LAW of the land." This (as has been justly observed by the Federalist) results from the very nature of political institutions. A law, by the very meaning of the terms, includes supremacy. If individuals enter into a state of society, the laws of that society must be the supreme regulator of their conduct. If a number of political societies enter into a larger political society, the laws, which the latter may enact, pursuant to the powers entrusted to it by its constitution, must be supreme over those societies, and the individuals, of whom they are composed. It would otherwise be a mere treaty, dependent on the good faith of the parties, and not a *government*, which is only another word for political power and supremacy. A state constitution is then in a just and appropriate sense, not only a *law*, but a supreme *law*, for the government of the whole people, within the range of the powers actually contemplated, and the rights secured by it. It would, indeed, be an extraordinary use of language to consider a declaration of rights in a constitution, and especially of rights, which it proclaims to be "unalienable and indefeasible," to be a matter of *contract*, and resting on such a basis, rather than a solemn recognition and admission of those rights, arising from the law of nature, and the gift of Providence, and incapable of being transferred or surrendered.

§ 352. There is nowhere found upon the face of the constitution any clause, intimating it to be a compact, or in anywise, providing for its interpretation, as such. On the contrary, the preamble emphatically speaks of it, as a solemn ordinance and establishment of government. The language is, "We, the people of the United States, do *ordain* and *establish* this *constitution* for the United States of America." *The people* do *ordain* and *establish*, not contract and stipulate with each other. The people of the

United States, not the distinct people of a *particular state* with the people of the other states. The people ordain and establish a "*constitution*," not a "*confederation*." The distinction between a constitution and a confederation is well known and understood. The latter, or at least a pure confederation, is a mere treaty or league between independent states, and binds no longer, than during the good pleasure of each. It rests forever in articles of compact, where each is, or may be the supreme judge of his own rights and duties. The former is a permanent form of government, where the powers, once given, are irrevocable, and cannot be resumed or withdrawn at pleasure. Whether formed by a single people, or by different societies of people, in their political capacity, a constitution, though originating in consent, becomes, when ratified, obligatory, as a fundamental ordinance or law. The constitution of a confederated republic, that is, of a national republic formed of several states, is, or at least, may be, not less an irrevocable form of government, than the constitution of a state formed and ratified by the aggregate of the several counties of the state.

§ 353. If it had been the design of the framers of the constitution or of the people, who ratified it, to consider it a mere confederation, resting on treaty stipulations, it is difficult to conceive, that the appropriate terms should not have been found in it. The United States were no strangers to compacts of this nature. They had subsisted to a limited extent before the revolution. The articles of confederation, though in some few respects national, were mainly of a pure federative character, and were treated as stipulations between states for many purposes independent and sovereign. And yet (as has been already seen) it was deemed a political heresy to maintain, that under it any state had a right to withdraw from it at pleasure, and repeal its operation; and that a party to the compact had a right to revoke that compact. The only places, where the terms, *confederation* or *compact*, are found in the constitution, apply to subjects of an entirely different nature, and manifestly in contradistinction to *constitution*. Thus, in the tenth section of the first article it is declared, that "no state shall enter into any treaty, alliance, or *confederation;*" "no state shall, without the consent of congress, &c. enter into any agreement or *compact* with another state, or with a foreign power." Again, in the sixth article it is declared, that "all debts

contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this *constitution*, as under the *confederation*." Again, in the tenth amendment it is declared that "the powers not *delegated* by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." A contract can in no just sense be called a delegation of powers.

§ 354. But that, which would seem conclusive on the subject, (as has been already stated,) is, the very language of the constitution itself, declaring it to be a supreme fundamental law, and to be of judicial obligation, and recognition in the administration of justice. "This constitution," says the sixth article, "and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, *shall be the supreme law of the land;* and the *judges* in every state shall be bound thereby, *anything in the constitution or laws* of any state to the contrary notwithstanding." If it is the supreme law, how can the people of any state, either by any form of its own constitution, or laws, or other proceedings, repeal, or abrogate, or suspend it?

§ 355. But, if the language of the constitution were less explicit and irresistible, no other interference could be correctly deduced from a view of the nature and objects of the instrument. The design is to establish a form of government. This, of itself, imports legal obligation, permanence, and uncontrollability by any, but the authorities authorized to alter, or abolish it. The object was to secure the blessings of liberty to the people, and to their posterity. The avowed intention was to supercede the old confederation, and substitute in its place a new form of government. We have seen, that the inefficiency of the old confederation forced the states to surrender the league then existing, and to establish a national constitution. . . .

§ 370. The cardinal conclusion, for which this doctrine of a compact has been, with so much ingenuity and ability, forced into the language of the constitution, (for the language no where alludes to it,) is avowedly to establish, that in construing the constitution, there is no common umpire; but that each state, nay each department of the government of each state, is the supreme judge for itself, of the powers, and rights, and duties, arising under that instrument. Thus, it has been solemnly asserted on more

than one occasion, by some of the state legislatures, that there is no common arbiter, or tribunal, authorized to decide in the last resort, upon the power and the interpretation of the constitution. . . .

§ 374. . . . . The constitution, contemplating the grant of limited powers, and distributing them among various functions, and the state governments, and their functionaries, being also clothed with limited powers, subordinate to those granted to the general government, whenever any question arises, as to the exercise of any power by any of these functionaries under the state, or federal government, it is of necessity, that such functionaries must, in the first instance, decide upon the constitutionality of the exercise of such power. It may arise in the course of the discharge of the functions of any one, or of all, of the great departments of the government, the executive, the legislative, and the judicial. The officers of each of these departments are equally bound by their oaths of office to support the constitution of the United States, and are therefore conscientiously bound to abstain from all acts, which are inconsistent with it. Whenever, therefore, they are required to act in a case, not hitherto settled by any proper authority, these functionaries must, in the first instance, decide, each for himself, whether, consistently with the constitution, the act can be done. If, for instance, the president is required to do any act, he is not only authorized, but required, to decide for himself, whether, consistently with his constitutional duties, he can do the act. So, if a proposition be before congress, every member of the legislative body is bound to examine, and decide for himself, whether the bill or resolution is within the legislative powers confided to congress. And in many cases the decisions of the executive and legislative departments, thus made, become final and conclusive, being from their very nature and character incapable of revision. Thus, in measures exclusively of a political, legislative, or executive character, it is plain, that as the supreme authority, as to these questions, belongs to the legislative and executive departments, they cannot be re-examined elsewhere. Thus, congress having the power to declare war, to levy taxes, to appropriate money, to regulate intercourse and commerce with foreign nations, their mode of executing these powers can never become the subject of re-examination in any other tribunal. So the power to make treaties being confided to the president and senate, when a treaty

is properly ratified, it becomes a law of the land, and no other tribunal can gainsay its stipulations. Yet cases may readily be imagined, in which a tax may be laid, or a treaty made, upon motives and grounds wholly beside the intention of the constitution. The remedy, however, in such cases is solely by an appeal to the people at the elections; or by the salutary power of amendment, provided by the constitution itself.

§ 375. But, where the question is of a different nature, and capable of judicial inquiry and decision, there it admits of a very different consideration. The decision then made, whether in favour, or against the constitutionality of the act, by the state, or by the national authority, by the legislature, or by the executive, being capable, in its own nature, of being brought to the test of the constitution, is subject to judicial revision. It is in such cases, as we conceive, that there is a final and common arbiter provided by the constitution itself, to whose decisions all others are subordinate; and that arbiter is the supreme judicial authority of the courts of the Union. . . .

§ 379. It has been said, "that however true it may be, that the judicial department is, in all questions submitted to it by the forms of the constitution, to decide in the last resort, that resort must necessarily be deemed the last *in relation to the other departments of the government, not in relation to the rights of the parties to the constitutional compact*, from which the judicial, as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers might subvert for ever, and beyond the possible reach of any rightful remedy, the very constitution, which all were instituted to preserve." [3] Now, it is certainly possible, that all the departments of a government may conspire to subvert the constitution of that government, by which they are created. But if they should so conspire, there would still remain an adequate remedy to redress the evil. In the first place, the people, by the exercise of the elective franchise, can easily check and remedy any dangerous, palpable, and deliberate infraction of the constitution in two of the great departments of government; and, in the third department, they can remove the judges, by impeachment, for any corrupt conspiracies. Besides these ordinary remedies, there

[3] Madison's Virginia Report, Jan. 1800, p. 8, 9.

is a still more extensive one, embodied in the form of the constitution, by the power of amending it, which is always in the power of three fourths of the states. It is a supposition not to be endured for a moment, that three fourths of the states would conspire in any deliberate, dangerous, and palpable breach of the constitution. And if the judicial department alone should attempt any usurpation, congress, in its legislative capacity, has full power to abrogate the injurious effects of such a decision. Practically speaking, therefore, there can be very little danger of any such usurpation or deliberate breach.

§ 380. But it is always a doubtful mode of reasoning to argue from the possible abuse of powers, that they do not exist. Let us look for a moment at the consequences, which flow from the doctrine on the other side. There are now twenty-four states in the Union, and each has, in its sovereign capacity, a right to decide for itself in the last resort, what is the true construction of the constitution; what are its powers; and what are the obligations founded on it. We may, then, have, in the free exercise of that right, twenty-four honest, but different expositions of every power in that constitution, and of every obligation involved in it. What one state may deny, another may assert; what one may assert at one time, it may deny at another time. This is not mere supposition. It has, in point of fact, taken place. There never has been a single constitutional question agitated, where different states, if they have expressed any opinion, have not expressed different opinions; and there have been, and, from the fluctuating nature of legislative bodies, it may be supposed, that there will continue to be, cases, in which the same state will at different times hold different opinions on the same question. Massachusetts at one time thought the embargo of 1807 unconstitutional; at another a majority, from the change of parties, was as decidedly the other way. Virginia, in 1810, thought that the Supreme Court was the common arbiter; in 1829 she thought differently. What, then, is to become of the constitution, if its powers are thus perpetually to be the subject of debate and controversy? What exposition is to be allowed to be of authority? Is the exposition of one state to be of authority there, and the reverse to be of authority in a neighboring state, entertaining an opposite exposition? Then, there would be at no time in the United States the same constitution in operation over the whole people. Is a power, which is

doubted, or denied by a single state, to be suspended either wholly, or in that state? Then, the constitution is practically gone, as a uniform system, or indeed, as any system at all, at the pleasure of any state. If the power to nullify the constitution exists in a single state, it may rightfully exercise it at its pleasure. Would not this be a far more dangerous and mischievous power, than a power granted by all the states to the judiciary to construe the constitution? Would not a tribunal, appointed under the authority of all, be more safe, than twenty-four tribunals acting at their own pleasure, and upon no common principles and co-operation? Suppose congress should declare war; shall one state have power to suspend it? Suppose congress should make peace; shall one state have power to involve the whole country in war? Suppose the president and senate should make a treaty; shall one state declare it a nullity, or subject the whole country to reprisals for refusing to obey it? Yet, if every state may for itself judge of its obligations under the constitution, it may disobey a particular law or treaty, because it may deem it an unconstitutional exercise of power, although every other state shall concur in a contrary opinion. Suppose congress should lay a tax upon imports burthensome to a particular state, or for purposes, which such state deems unconstitutional, and yet all the other states are in its favour; is the law laying the tax to become a nullity? That would be to allow one state to withdraw a power from the Union, which was given by the people of all the states. That would be to make the general government the servant of twenty-four masters, of different wills and different purposes, and yet bound to obey them all. . . .

ABEL P. UPSHUR

THE TRUE NATURE AND CHARACTER OF OUR FEDERAL GOVERNMENT[1]

1840

Upshur, leader in Virginia politics and Secretary of State in Tyler's cabinet, wrote the best answer to Story's argument against state sovereignty.

[54] I have endeavored to show, in the preceding part of this review, that the people of the several states, while in a colonial condition, were not "one people" in any political sense of the terms; that they did not become so by the declaration of independence, but that each state became a complete and perfect sovereignty within its own limits; that the revolutionary government, prior to the establishment of the confederation, was, emphatically, a government of the states as such, through congress, as their common agent and representative, and that, by the articles of confederation, each state expressly reserved its entire sovereignty and independence. In no one of the various conditions, through which we have hitherto traced them, do we perceive any feature of consolidation; but their character as distinct and sovereign states is always carefully and jealously preserved. We are, then, to contemplate them as sovereign states, when the first movements towards the formation of the present constitution were made. . . .

[55] Such was the origin of the convention of 1787. It is apparent that the delegates to that body were to be "appointed by the several states," and not by "the people of the United States;" that they were to report their proceedings to "congress and the several legislatures," and not to "the people of the United States;" and that their proceedings were to be part of the constitution, only when "agreed to in congress and confirmed by the state," and not when confirmed by "the people of the United States." Accordingly, delegates were, in point of fact, appointed by the states; those delegates did, in point of fact, report to congress and the states; and congress did, in point of fact, approve, and the

[1] *A Brief Enquiry into the True Nature and Character of our Federal Government: Being a Review of Judge Story's Commentaries on the Constitution of the United States.* By a Virginian. Petersburg: E. and J. C. Ruffin. 1840.

states did, in point of fact, adopt, ratify and confirm the constitution which they formed. No other agency than that of the states as such, and of congress, which was strictly the representative of the states, is to be discerned in any part of this whole proceeding. We may well ask, therefore, from what unknown source our author derives the idea, that the constitution was formed by "the people of the United States," since the history of the transaction, even as he has himself detailed it, proves that "the people of the United States" did not appoint delegates to the convention, were not represented in that body and did not adopt and confirm its act as their own! . . . .

[60] . . . . I do not perceive with what propriety it can be said, that the "people of the United States," formed the Constitution, since they neither appointed the convention, nor ratified their act, nor otherwise adopted it as obligatory upon them. Even if the preamble be entitled to all the influence which has been allowed to it, our author's construction of its language is not, as has already been remarked, the only one of which it is susceptible. "we, the people of the United States," may, without any violence to the rules of fair construction, mean "we, the people of the states united." In this acceptation, its terms conform to the history of the preamble itself, to that of the whole Constitution, and those who made it. In any other acceptation, they are either without meaning, or else they affirm what history proves to be false. . . .

[63] . . . . All that has ever been contended for is, that a state has a right to judge of its *own* obligations, and, consequently, to judge of those of the federal government, so far as they relate to *such state itself*, and no farther. It is admitted on all hands, that when the *federal government transcends its constitutional power*, and when, of course, it is not acting *within* its "obligations," the parties to that government, whoever they may be, are no longer under any duty to respect or obey it. This has been repeatedly affirmed by our courts, both state and federal, and has never been denied by any class of politicians. Who then is to determine, whether it has so transcended its constitutional obligations or not? It is admitted that to a certain extent the supreme court is the proper tribunal in the last resort, because the states, in establishing that tribunal, have expressly agreed to make it so. The jurisdiction of the federal courts extends to certain cases, affecting the rights of the individual citizens, and to certain others affecting

those of the individual states. So far as the federal government is authorized to act on the individual citizen, the powers of the one and the rights of the other, are properly determinable by the federal courts. And the decision is binding too, and absolutely final, so far as the relation of the citizen to the *federal government* is concerned. There is not, within that system, any tribunal of appeal, from the decisions of the supreme court. And so also of those cases in which the rights of *the states* are referred to the federal tribunals. In this sense, and to this extent, it is strictly true that the parties have not "an independent right to construe, control and judge, of the obligations" of the federal government, but they are bound by the decisions of the federal courts, so far as they have authorized and agreed to submit to them. But there are many cases involving the question of federal power which are not cognizable before the federal courts; and, of course, as to these, we must look out for some other umpire. It is precisely in this case that the question, who are the parties to the constitution, becomes all important and controlling. If the states are parties as sovereign states, then it follows, as a necessary consequence, that each of them has the right which belongs to every sovereignty, to construe its own contracts and agreements, and to decide upon its own rights and powers. . . .

[65] His first argument is, that the "United States were no strangers to compacts of this nature," and that those who ratified the Constitution, if they had meant it as a compact, would have used "appropriate *terms*" to convey that idea. I have already shown that if he means by this, that the Constitution would have contained some express declaration to that effect, he is altogether inaccurate. He himself knows, as a *judge*, that a deed, or other instrument, receives its distinctive character, not from the *name* which the parties may choose to give to it, but from its *legal effect and operation*. The same rule applies to constitutions. Ours is a compact or not, precisely as its provisions make it so, or otherwise. The question, who are the parties to it, may influence, and ought to influence, the construction of it in this respect; and I propose presently to show, from this and other views of it, that it is, in its nature, "a mere confederation," and not a consolidated government, in any one respect. It *does*, therefore, contain "appropriate terms," if we take those words in an enlarged sense, to convey the idea of a compact.

Our author supposes, however, that a "conclusive" argument upon this subject is furnished by that clause of the Constitution which declares that "This Constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state, shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding." Hence he concludes that "the people of any state cannot, by any form of its own constitution or laws, or other proceedings, repeal, or abrogate or suspend it."

Here again the author displays a want of proper definiteness and precision, in the statement of his proposition. The people who *make* a law, can, upon the principles of all our institutions, either "repeal or abrogate or suspend it;" and if, as he supposes, our constitution was made by "the people of the United States," in the aggregate, then "the people of any state," or of half a state, may repeal, or abrogate, or suspend it, if they happen to be a majority of the whole. The argument, therefore, if we are to take it in the full latitude in which it is laid down, is not sound, upon the author's own principles; and it can avail nothing, except upon the very supposition which he disallows; to wit, that the Constitution was formed by the states, and not by the people of the United States. Even in this acceptation, however, I am at a loss to perceive how it establishes the proposition with which he set out; to wit, that the Constitution is not a compact. Certainly it is very possible so to frame a compact, that no party to it shall have a right either to "repeal or abrogate or suspend it;" and if it be possible to do so, then the mere absence of such right does not even *tend* to disprove the existence of compact. Our own Constitution, even in the opinion of those who are supposed by the author to be least friendly to it, is a compact of precisely this nature. The Nullifier contends only for the right of a state to *prevent the Constitution from being violated by the general government*, and not for the right either to repeal, abrogate or suspend. The Seceder asserts only that a state is competent to withdraw from the Union whenever it pleases; but does not assert that in so doing it can repeal, or abrogate or suspend the Constitution, as to the other states. Secession would, indeed, utterly destroy the compact as to the seceding party; but would not necessarily affect its

obligation as to the rest. If it would, then the rest would have no right to coerce the seceding state, nor to place her in the attitude of an enemy. It is certain, I think, they would not have such right; but those who assert that they would—and the author is among the number—must either abandon that idea, or they must admit that the act of secession does not break up the Constitution except as to the seceding state. For the moment the Constitution is destroyed, all the authorities which it has established cease to exist. There is no longer such a government as that of the United States, and, of course, they cannot, as such, either make any demand, or assert any right, or enforce any claim.

The conclusion, however, to which our author has arrived, upon this point, is not that to which he originally designed that his premises should conduct him. The question of the right of a party to a compact, to repeal or abrogate or suspend it, does not enter into his original proposition, nor result from the argument which he had immediately before used to sustain it. The proposition is, that our Constitution is not a compact, and the argument is, that it is not a compact, because it is a supreme law. The same idea is substantially reaffirmed, in the next argument by which he proposes to prove the main proposition. "The design" (of the Constitution) "is to establish a government. This, of itself, imports legal obligation, permanence, and uncontrollability by any, but the authorities authorized to alter or abolish it."

Admitting, as I cheerfully do, that all this is strictly true, I am yet unable to perceive how it demonstrates that our Constitution is not a compact. May not a compact between sovereign states, be a government? Is there any such necessary restraint upon, or incident of, sovereign power, that it cannot, in any possible exercise of it, produce such a result? If there is, then it was incumbent on the author to show it, because, if there is not, his argument is of no force; and he himself will admit, that the proposition, to say the least of it, is not quite clear enough to be taken as a postulate. His own historical information, if he had drawn on its ample funds, must have furnished him with numerous instances of governments established by compact. He need not, however, have gone beyond our own Confederation, which, although a compact among sovereign states, in the strictest sense, was yet treated as a government by the people at home, and recognized as such by all foreign powers. It was also "supreme" within its prescribed

sphere of action; its rights and powers over the most important subjects of general concern were not only superior to those of the states, but were exclusive. . . .

[71] It is worthy of remark, that of the states, New Hampshire and the author's own state of Massachusetts, expressly call the Constitution a compact, in their acts of ratification; and no other state indicates a different view of it. This tends to prove that public opinion at the time had not drawn the nice distinction which is now insisted on, between a government and a compact; and that those who for eight years had been living under a compact, and forming treaties with foreign powers by virtue of its provisions, had never for a moment imagined that it was not a government.

But little importance, however, ought to be attached to reasoning of this kind. Those who contend that our Constitution is a compact, very properly place their principles upon much higher ground. They say that the Constitution is a compact, *because it was made by sovereign states, and because that is the only mode in which sovereign states treat with one another.* The conclusion follows irrestibly from the premises; and those who would deny the one, are bound to disprove the other. Our adversaries *begin* to reason at the very point at which reasoning becomes no longer necessary. Instead of disproving our premises, they *assume* that they are wrong, and then triumphantly deny our conclusion also. If we establish that the Constitution was made by the states, and that they were, at the time, distinct, independent and perfect sovereignties, it follows that they could not treat with one another, even with *a view* to the formation of a new common government, except in their several and sovereign characters. They must have maintained the same character when they entered upon that work, and throughout the whole progress of it. Whatever the government may be, therefore, in its essential character, whether a federative or a consolidative government, it is still a compact, or the result of a compact, because those who made it *could not* make it in any other way. In determining its essential character, therefore, we are bound to regard it as a compact, and to give it such a construction as is consistent with that idea. We are not to *presume* that the parties to it designed to change the character in which they negotiated with one another. Every fair and legitimate inference is otherwise. Its sovereignty is the very last thing

which a nation is willing to surrender; and nothing short of the clearest proof can warrant us in concluding that it has surrendered it. In all cases, therefore, where the language and spirit of the Constitution are doubtful, and even where their most natural construction would be in favor of consolidation, (if there be any such case,) we should still incline against it, and in favor of the rights of the states, unless no other construction can be admitted.

Having disposed of this preliminary question, we now approach the Constitution itself. I affirm that it is, in its structure, a federative and not a consolidated government; that it is so, in all its departments, and in all its leading and distinguishing provisions; and, of course, that it is to be so interpreted, *by the force of its own terms*, apart from any influence to be derived from that rule of construction which has just been laid down. . . .

[79] The object of the preceding pages has been to show that the Constitution is federative, in the power which framed it; federative in the power which adopted and ratified it; federative in the power which sustains and keeps it alive; federative in the power by which alone it can be altered or amended; and federative in the structure of all its departments. In what respect, then, can it justly be called a consolidated or national government? Certainly, the mere fact that, in particular cases, it is authorized to act directly on the people, does not disprove its federative character, since that very sovereignty in the states, which a confederation implies, includes within it the right of the state to subject its own citizens to the action of the common authority of the confederated states, in any form which may seem proper to itself. Neither is our Construction to be deemed the less federative, because it was the object of those who formed it to establish "a government," and one effective for all the legitimate purposes of government. Much emphasis has been laid upon this word, and it has even been thought, by one distinguished statesman of Judge Story's school, that ours is "*a government proper*," which I presume implies that it is a government in a peculiarly emphatic sense. I confess that I do not very clearly discern the difference between a government and a government proper. Nothing is a government which is not *properly* so; and whatever is properly a government, is a government proper. But whether ours is a "government proper," or only a simple government, does not prove that it is not a confederation, unless it be true that a confederation cannot

be a government. For myself, I am unable to discover why states, absolutely sovereign, may not create for themselves, by compact, a common government, with powers as extensive and supreme as any sovereign people can confer on a government established by themselves. In what other particular ours is a consolidated or national government, I leave it to the advocates of that doctrine to show.

We come now to a more particular and detailed examination of the question, "Who is the final judge or interpreter in constitutional controversies?" The fourth chapter of this division of the author's work is devoted to this enquiry; and the elaborate examination which he has given to the subject, shows that he attached a just importance to it. The conclusion, however, to which he has arrived, leaves still unsettled the most difficult and contested propositions which belong to this part of the Constitution. His conclusion is, that, "in all questions of a judicial nature," the supreme court of the United States is the final umpire; and that the *states*, as well as individuals, are absolutely bound by its decisions. His reasoning upon this part of the subject is not new, and does not strike me as being particularly forcible. . . .

[83] This brief review of the judicial power of the United States, as given in the Constitution, is not offered as a full analysis of the subject; for the question before us does not render any such analysis necessary. My design has been only to show with what extreme reserve judicial power has been conferred, and with what caution it has been restricted to those cases, only, which the new relation between the states, established by the Constitution, rendered absolutely necessary. In all the cases above supposed, the jurisdiction of the federal courts is clear and undoubted; and as the states have, in the frame of the Constitution, agreed to submit to the exercise of this jurisdiction, they are bound to do so, and to compel their people to like submission. But it is to be remarked, that they are bound only *by* their agreement, and not *beyond* it. They are under no obligation to submit to the decision of the supreme court, on subject matter not properly cognizable before it, nor to those between parties not responsible to its jurisdiction. Who, then, is to decide this point? Shall the supreme court decide it for itself, and against all the world? It is admitted that every court must necessarily determine every question of jurisdiction which arises before it, and, so far, it must of course be the judge

of its own powers. If it be a court of the last resort, its decision is necessarily final, so far as those authorities are concerned, which belong to the same system of government with itself. There is, in fact, no absolute and certain limitation, in any constitutional government, to the powers of its own judiciary; for, as those powers are derived from the Constitution, and as the judges are the interpreters of the Constitution, there is nothing to prevent them from interpreting in favor of any power which they may claim. The supreme court, therefore, *may* assume jurisdiction over subjects and between parties, not allowed by the Constitution, and there is no power in the *federal government* to gainsay it. Even the impeachment and removal of the judges, for ignorance or corruption, would not invalidate their decisions already pronounced. Is there, then, no redress? The Constitution itself will answer this question, in the most satisfactory manner.

The tenth article of the amendments of the Constitution provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The powers thus reserved, are not only reserved against the federal government in whole, but against each and every department thereof. The judiciary is no more excepted out of the reservation than is the legislature or the executive. Of what nature, then, are those reserved powers? Not the powers, if any such there be, which are possessed by all the states together, for the reservation is to "the states *respectively;*" that is, to each state separately and distinctly. Now we can form no idea of any power possessed by a state as such, and independent of every other state, which is not, in its nature, a sovereign power. Every power so reserved, therefore, must be of such a character that each state may exercise it, without the least reference or responsibility to any other state whatever. . . .

[86] Considering the nature of our system of government, the states ought to be, and I presume always will be, extremely careful not to interpose their sovereign power against the decisions of the supreme court in any case where that court clearly has jurisdiction. . . . There are, however, many cases involving questions of the powers of government, state and federal, which cannot assume a proper form for judicial investigation. Most questions of mere political power, are of this sort; and such are all questions between a state and the United States. As to these, the Constitu-

tion confers no jurisdiction on the federal courts, and, of course, it provides no common umpire to whose decision they can be referred. In such cases, therefore, the state must of necessity decide for itself. But there are also cases between citizen and citizen, arising under the laws of the United States, and between the United States and the citizens, arising in the same way. So far as the federal tribunals have cognizance of such cases, their decisions are final. If the constitutionality of the law under which the case arises, should come into question, the court has *authority* to decide it, and there is no relief for the parties, in any other judicial proceeding. If the decision, in a controversy between the United States and a citizen, should be against the United States, it is, of course, final and conclusive. If the decision should be against the citizen, his only relief is by an appeal to his own state. He is under no obligation to submit to federal decisions at all, except so far only as his own state has commanded him to do so; and he has, therefore, a perfect right to ask his state whether her commands extend to the particular case or not. He does not ask whether the federal court has *interpreted the law* correctly or not, but whether or not she *ever consented that congress should pass the law*. If congress had such power, he has no relief, for the decision of the highest federal court is final; if congress had not such power, then he is oppressed by the action of a usurped authority, and has a right to look to his own state for redress. His state may interpose in his favor or not, as she may think proper. If she does not, then there is an end of the matter; if she does, then it is no longer a judicial question. The question is then between new parties, who are not bound by the former decision; between a sovereign state and its own agent; between a state and the United States. As between these parties the federal tribunals have no jurisdiction, there is no longer a common umpire to whom the controversy can be referred. The state must of necessity judge for itself, by virtue of that inherent, sovereign power and authority, which, as to this matter, it has never surrendered to any other tribunal. Its decision, whatever it may be, is binding upon itself and upon its own people, and no farther. . . .

[93] According to the principles of all our institutions, sovereignty does not reside in any government whatever, neither state nor federal. Government is regarded merely as the agent of those who create it, and subject in all respects to their will. In

the states, the sovereign power is in the people of the states respectively; and the sovereign power of the United States would, for the same reason, be "in the people of the United States," if there were any such people, known as a single nation, and the framers of the federal government. We have already seen, however, that there are no such people, in a strict political sense, and that no such people had any agency in the formation of our Constitution, but that it was formed by *the states*, emphatically as such. It would be absurd, according to all principles received and acknowledged among us, to say that the sovereign power is in one party, and the power which creates the government is in another. The true sovereignty of the United States, therefore, is in the states, and not in the people of the United States, nor in the federal government. That government is but the agent through whom a portion of this sovereign power is exerted; possessing no sovereignty itself, and exerting no power, except such only as its constituents have conferred on it. In ascertaining what these powers are, it is obviously proper that we should look only to the grant from which they are derived. The agent can claim nothing for itself, and on its own account. The Constitution is a compact, and the parties to it are each state, with each and every other state. The federal government is not a party, but is the mere creature of the agreement between the states as parties. Each state is both grantor and grantee, receiving from each and all the other states precisely what, in its turn, it concedes to each and all of them. The rule, therefore, that the words are to be taken most strongly in favor of the grantee, cannot apply, because, as each state is both grantor and grantee, it would give exactly as much as it would take away. The only mode, therefore, by which we may be certain to do no injustice to the intentions of the parties, is by taking their *words* as the true exponents of their meaning. . . .

[96] The objects for which the federal government was established, are by no means equal in importance to those of the state constitutions. It is difficult to imagine any necessity for a federal government at all, except what springs from the relations of the states to foreign nations. A union among them is undoubtedly valuable for many purposes. It renders them stronger and more able to resist their enemies; it attracts to them the respect of other countries, and gives them advantages in the formation of foreign connexions; it facilitates all the operations of war, of commerce,

and of foreign diplomacy. But these objects, although highly important, are not so important as those great rights which are secured to us by the state constitutions. The states might singly protect themselves; singly form their foreign connexions, and singly regulate their commerce; not so effectually, it is true, but effectually enough to afford reasonable security to their independence and general prosperity. . . . Take away the federal government altogether, and still we are free, our rights are still protected, our business is still regulated, and we still enjoy all the other advantages and blessings of established and well organized government. But if you take away the state governments, what have you left? A federal government, which can neither regulate your industry, secure your property, nor protect your person! Surely there can be no just reason for stealing, by liberal construction and implications, from these beneficent state governments, any portion of their power, in order to confer it on another government, which, from its very organization, cannot possibly exert it for equally useful purposes. A strict construction of the Constitution will give to the federal government all the power which it can beneficially exert, all that it is necessary for it to possess, and all that its framers ever designed to confer on it. . . .

[129] Under a federative system, the people are not liable to be acted on, (at least, not to the same extent,) by those influences which are so apt to betray and enslave them, under a consolidated government. Popular masses, acting under the excitements of the moment, are easily led into fatal errors. History is full of examples of the good and great sacrificed to the hasty judgments of infuriated multitudes, and of the most fatal public measures adopted under the excitements of the moment. How easy is it for the adroit and cunning to avail themselves of such occasion, and how impossible is it, for a people so acted on, to watch their rulers wisely, and guard themselves against the encroachments of power? In a federative system, this danger is avoided, so far as their common government is concerned. The right of interposition belongs, not to the people in the aggregate, but to the people in separate and comparatively small subdivisions. And even in these subdivisions, they can act only through the forms of their own separate governments. These are necessarily slow and deliberate, affording time for excitement to subside, and for passion to cool. Having to pass through their own governments, before they can reach

that of the United States, they are forbidden to act, until they have had time for reflection, and for the exercise of a cool and temperate judgment. Besides, they are taught to look, not to one government only, for the protection and security of their rights, and not to feel that they owe obedience only to that. Conscious that they can find, in their own state governments, protection against the wrongs of the federal government, their feelings of dependence is less oppressive, and their judgments more free. And while their efforts to throw off oppression are not repressed by a feeling that there is no power to which they can appeal, these efforts are kept under due restraints, by a consciousness that they cannot be unwisely exerted, except to the injury of the people themselves. It is difficult to perceive how a federal government, established on correct principles, can ever be overthrown, except by external violence, so long as the federative principle is duly respected and maintained. All the requisite checks and balances will be found, in the right of the states to keep their common government within its proper sphere; and a sufficient security for the due exercise of that right is afforded by the fact, that it is the *interest* of the states to exercise it discreetly. So far as our own government is concerned, I venture to predict that it will become absolute and irresponsible, precisely in proportion as the rights of the states shall cease to be respected, and their authority to interpose for the correction of federal abuses shall be denied and overthrown. . . .

JOHN C. CALHOUN

A DISQUISITION ON GOVERNMENT [1]

1851

During 1848 and 1849 Calhoun wrote two political treatises, both of which he left unpublished at his death in 1850. The work on them was, however, virtually completed and they were published shortly afterwards. They were both the product of his twenty years' fight for state sovereignty, but only the second and longer of the two deals with the issue in the conventional manner.

[1] *The Works of John C. Calhoun*, edited by R. K. Cralle. New York: D. Appleton and Company. 1853. Vol. I.

The shorter and more carefully worked-out *Disquisition* is in itself not a plea for state rights or powers but rather the proposal of a system intended to overcome the most serious difficulties inherent in political society. It is one of the most logical treatises on political philosophy ever written, and, among American works, the most notable systematic study produced during the nineteenth century.

[1] In order to have a clear and just conception of the nature and object of government, it is indispensable to understand correctly what that constitution or law of our nature is, in which government originates; or, to express it more fully and accurately,—that law, without which government would not, and with which, it must necessarily exist. Without this, it is impossible to lay any solid foundation for the science of government, as it would be to lay one for that of astronomy, without a like understanding of that constitution or law of the material world, according to which the several bodies composing the solar system mutually act on each other, and by which they are kept in their respective spheres. The first question, accordingly, to be considered is,—What is that constitution or law of our nature, without which government would not exist, and with which its existence is necessary?

In considering this, I assume, as an incontestable fact, that man is so constituted as to be a social being. His inclinations and wants, physical and moral, irresistibly impel him to associate with his kind; and he has, accordingly, never been found, in any age or country, in any state other than the social. In no other, indeed, could he exist; and in no other,—were it possible for him to exist,—could he attain to a full development of his moral and intellectual faculties, or raise himself, in the scale of being, much above the level of the brute creation.

I next assume, also, as a fact not less incontestable, that, while man is so constituted as to make the social state necessary to his existence and the full development of his faculties, this state itself cannot exist without government. The assumption rests on universal experience. In no age or country has any society or community ever been found, whether enlightened or savage, without government of some description.

Having assumed these, as unquestionable phenomena of our nature, I shall, without further remark, proceed to the investigation of the primary and important question,—What is that con-

stitution of our nature, which, while it impels man to associate with his kind, renders it impossible for society to exist without government?

The answer will be found in the fact, (not less incontestable than either of the others,) that, while man is created for the social state, and is accordingly so formed as to feel what affects others, as well as what affects himself, he is, at the same time, so constituted as to feel more intensely what affects him directly, than what affects him indirectly through others; or, to express it differently, he is so constituted, that his direct or individual affections are stronger than his sympathetic or social feelings. I intentionally avoid the expression, *selfish* feelings, as applicable to the former; because, as commonly used, it implies an unusual excess of the individual over the social feelings, in the person to whom it is applied; and, consequently, something depraved and vicious. My object is, to exclude such inference, and to restrict the inquiry exclusively to facts in their bearings on the subject under consideration, viewed as mere phenomena appertaining to our nature,—constituted as it is; and which are as unquestionable as is that of gravitation, or any other phenomenon of the material world.

In asserting that our individual are stronger than our social feelings, it is not intended to deny that there are instances, growing out of peculiar relations,—as that of a mother and her infant,—or resulting from the force of education and habit over peculiar constitutions, in which the latter have overpowered the former; but these instances are few, and always regarded as something extraordinary. The deep impression they make, whenever they occur, is the strongest proof that they are regarded as exceptions to some general and well understood law of our nature; just as some of the minor powers of the material world are apparently to gravitation.

I might go farther, and assert this to be a phenomenon, not of our nature only, but of all animated existence, throughout its entire range, so far as our knowledge extends. It would, indeed, seem to be essentially connected with the great law of self-preservation which pervades all that feels, from man down to the lowest and most insignificant reptile or insect. In none is it stronger than in man. His social feelings may, indeed, in a state of safety and abundance, combined with high intellectual and moral culture,

acquire great expansion and force; but not so great as to overpower this all-pervading and essential law of animated existence.

But that constitution of our nature which makes us feel more intensely what affects us directly than what affects us indirectly through others, necessarily leads to conflict between individuals. Each, in consequence, has a greater regard for his own safety or happiness, than for the safety or happiness of others; and, where these come in opposition, is ready to sacrifice the interests of others to his own. And hence, the tendency to a universal state of conflict, between individual and individual; accompanied by the connected passions of suspicion, jealousy, anger and revenge,—followed by insolence, fraud and cruelty;—and, if not prevented by some controlling power, ending in a state of universal discord and confusion, destructive of the social state and the ends for which it is ordained. This controlling power, wherever vested, or by whomsoever exercised, is GOVERNMENT.

It follows, then, that man is so constituted, that government is necessary to the existence of society, and society to his existence, and the perfection of his faculties. It follows, also, that government has its origin in this twofold constitution of his nature; the sympathetic or social feelings constituting the remote,—and the individual or direct, the proximate cause.

If man had been differently constituted in either particular;—if, instead of being social in his nature, he had been created without sympathy for his kind, and independent of others for his safety and existence; or if, on the other hand, he had been so created, as to feel more intensely what affected others than what affected himself, (if that were possible,) or, even, had this supposed interest been equal,—it is manifest that, in either case, there would have been no necessity for government, and that none would ever have existed. But, although society and government are thus intimately connected with and dependent on each other,—of the two society is the greater. It is the first in the order of things, and in the dignity of its object; that of society being primary,—to preserve and perfect our race; and that of government secondary and subordinate, to preserve and perfect society. Both are, however, necessary to the existence and well-being of our race, and equally of Divine ordination.

I have said,—if it were possible for man to be so constituted, as to feel what affects others more strongly than what affects him-

self, or even as strongly,—because, it may be well doubted, whether the stronger feeling or affection of individuals for themselves, combined with a feebler and subordinate feeling or affection for others, is not, in beings of limited reason and faculties, a constitution necessary to their preservation and existence. If reserved,—if their feelings and affections were stronger for others than for themselves, or even as strong, the necessary result would seem to be, that all individuality would be lost; and boundless and remediless disorder and confusion would ensue. For each, at the same moment, intensely participating in all the conflicting emotions of those around him, would, of course, forget himself and all that concerned him immediately, in his officious intermeddling with the affairs of all others; which, from his limited reason and faculties, he could neither properly understand nor manage. Such a state of things would, as far as we can see, lead to endless disorder and confusion, not less destructive to our race than a state of anarchy. It would, besides, be remediless,—for government would be impossible; or, if it could by possibility exist, its object would be reversed. Selfishness would have to be encouraged, and benevolence discouraged. Individuals would have to be encouraged, by rewards, to become more selfish, and deterred, by punishments, from being too benevolent; and this, too, by a government, administered by those who, on the supposition, would have the greatest aversion for selfishness and the highest admiration for benevolence.

To the Infinite Being, the Creator of all, belongs exclusively the care and superintendence of the whole. He, in his infinite wisdom and goodness, has allotted to every class of animated beings its condition and appropriate functions; and has endowed each with feelings, instincts, capacities, and faculties, best adapted to its allotted condition. To man, he has assigned the social and political state, as best adapted to develop the great capacities and faculties, intellectual and moral, with which he has endowed him; and has, accordingly, constituted him so as not only to impel him into the social state, but to make government necessary for his preservation and well-being.

But government, although intended to protect and preserve society, has itself a strong tendency to disorder and abuse of its powers, as all experience and almost every page of history testify. The cause is to be found in the same constitution of our nature

which makes government indispensable. The powers which it is necessary for government to possess, in order to repress violence and preserve order, cannot execute themselves. They must be administered by men in whom, like others, the individual are stronger than the social feelings. And hence, the powers vested in them to prevent injustice and oppression on the part of others, will, if left unguarded, be by them converted into instruments to oppress the rest of the community. That, by which this is prevented, by whatever name called, is what is meant by CONSTITUTION, in its most comprehensive sense, when applied to GOVERNMENT.

Having its origin in the same principle of our nature, *constitution* stands to *government*, as *government* stands to *society;* and, as the end for which society is ordained, would be defeated without government, so that for which government is ordained would, in a great measure, be defeated without constitution. But they differ in this striking particular. There is no difficulty in forming government. It is not even a matter of choice, whether there shall be one or not. Like breathing, it is not permitted to depend on our volition. Necessity will force it on all communities in some one form or another. Very different is the case as to constitution. Instead of a matter of necessity, it is one of the most difficult tasks imposed on man to form a constitution worthy of the name; while, to form a perfect one,—one that would completely counteract the tendency of government to oppression and abuse, and hold it strictly to the great ends for which it is ordained,—has thus far exceeded human wisdom, and possibly ever will. From this, another striking difference results. Constitution is the contrivance of man, while government is of Divine ordination. Man is left to perfect what the wisdom of the Infinite ordained, as necessary to preserve the race.

With these remarks, I proceed to the consideration of the important and difficult question: How is this tendency of government to be counteracted? Or, to express it more fully,—How can those who are invested with the powers of government be prevented from employing them, as the means of aggrandizing themselves, instead of using them to protect and preserve society? It cannot be done by instituting a higher power to control the government, and those who administer it. This would be but to change the seat of authority, and to make this higher power, in

reality, the government; with the same tendency, on the part of those who might control its powers, to pervert them into instruments of aggrandizement. Nor can it be done by limiting the powers of government, so as to make it too feeble to be made an instrument of abuse; for, passing by the difficulty of so limiting its powers, without creating a power higher than the government itself to enforce the observance of the limitations, it is a sufficient objection that it would, if practicable, defeat the end for which government is ordained, by making it too feeble to protect and preserve society. The powers necessary for this purpose will ever prove sufficient to aggrandize those who control it, at the expense of the rest of the community.

In estimating what amount of power would be requisite to secure the objects of government, we must take into the reckoning, what would be necessary to defend the community against external, as well as internal dangers. Government must be able to repel assaults from abroad, as well as to repress violence and disorders within. It must not be overlooked, that the human race is not comprehended in a single society or community. The limited reason and faculties of man, the great diversity of language, customs, pursuits, situation and complexion, and the difficulty of intercourse, with various other causes, have, by their operation, formed a great many separate communities, acting independently of each other. Between these there is the same tendency to conflict,—and from the same constitution of our nature,—as between men individually; and even stronger,—because the sympathetic or social feelings are not so strong between different communities, as between individuals of the same community. So powerful, indeed, is this tendency, that it has led to almost incessant wars between contiguous communities for plunder and conquest, or to avenge injuries, real or supposed.

So long as this state of things continues, exigencies will occur, in which the entire powers and resources of the community will be needed to defend its existence. When this is at stake, every other consideration must yield to it. Self-preservation is the supreme law, as well with communities as individuals. And hence the danger of withholding from government the full command of the power and resources of the state; and the great difficulty of limiting its powers consistently with the protection and preservation of the community. And hence the question recurs,—By what

means can government, without being divested of the full command of the resources of the community, be prevented from abusing its powers?

The question involves difficulties which, from the earliest ages, wise and good men have attempted to overcome;—but hitherto with but partial success. For this purpose many devices have been resorted to, suited to the various stages of intelligence and civilization through which our race has passed, and to the different forms of government to which they have been applied. The aid of superstition, ceremonies, education, religion, organic arrangements, both of the government and the community, has been, from time to time, appealed to. Some of the most remarkable of these devices, whether regarded in reference to their wisdom and the skill displayed in their application, or to the permanency of their effects, are to be found in the early dawn of civilization;—in the institutions of the Egyptians, the Hindoos, the Chinese, and the Jews. The only materials which that early age afforded for the construction of constitutions, when intelligence was so partially diffused, were applied with consummate wisdom and skill. To their successful application may be fairly traced the subsequent advance of our race in civilization and intelligence, of which we now enjoy the benefits. For, without a constitution,—something to counteract the strong tendency of government to disorder and abuse, and to give stability to political institutions,—there can be little progress or permanent improvement.

In answering the important question under consideration, it is not necessary to enter into an examination of the various contrivances adopted by these celebrated governments to counteract this tendency to disorder and abuse, nor to undertake to treat of constitution in its most comprehensive sense. What I propose is far more limited,—to explain on what principles government must be formed, in order to resist, by its own interior structure,—or, to use a single term, *organism*,—the tendency to abuse of power. This structure, or organism, is what is meant by constitution, in its strict and more usual sense; and it is this which distinguishes, what are called, constitutional governments from absolute. It is in this strict and more usual sense that I propose to use the term hereafter.

How government, then, must be constructed, in order to counteract, through its organism, this tendency on the part of those

who make and execute the laws to oppose those subject to their operation, is the next question which claims attention.

There is but one way in which this can possibly be done; and that is, by such an organism as will furnish the ruled with the means of resisting successfully this tendency on the part of the rulers to oppression and abuse. Power can only be resisted by power,—and tendency by tendency. Those who exercise power and those subject to its exercise,—the rulers and the ruled,—stand in antagonistic relations to each other. The same constitution of our nature which leads rulers to oppress the ruled,—regardless of the object for which government is ordained,—will, with equal strength, lead the ruled to resist, when possessed of the means of making peaceable and effective resistance. Such an organism, then, as will furnish the means by which resistance may be systematically and peaceably made on the part of the ruled, to oppression and abuse of power on the part of the rulers, is the first and indispensable step towards *forming* a constitutional government. And as this can only be effected by or through the right of suffrage,—(the right on the part of the ruled to choose their rulers at proper intervals, and to hold them thereby responsible for their conduct,)—the responsibility of the rulers to the ruled, through the right of suffrage, is the indispensable and primary principle in the *foundation* of a constitutional government. When this right is properly guarded, and the people sufficiently enlightened to understand their own rights and the interests of the community, and duly to appreciate the motives and conduct of those appointed to make and execute the laws, it is all-sufficient to give to those who elect, effective control over those they have elected.

I call the right of suffrage the indispensable and primary principle; for it would be a great and dangerous mistake to suppose, as many do, that it is, of itself, sufficient to form constitutional governments. . . .

The right of suffrage, of itself, can do no more than give complete control to those who elect, over the conduct of those they have elected. In doing this, it accomplishes all it possibly can accomplish. This is its aim,—and when this is attained, its end is fulfilled. It can do no more, however enlightened the people, or however widely extended or well guarded the right may be. The sum total, then, of its effects, when most successful, is, to make those elected, the true and faithful representatives of those who

elected them,—instead of irresponsible rulers,—as they would be without it; and thus, by converting it into an agency, and the rulers into agents, to divest government of all claims to sovereignty, and to retain it unimpaired to the community. But it is manifest that the right of suffrage, in making these changes, transfers, in reality, the actual control over the government, from those who make and execute the laws, to the body of the community; and, thereby, places the powers of the government as fully in the mass of the community, as they would be if they, in fact, had assembled, made and executed the laws themselves, without the intervention of representatives or agents. The more perfectly it does this the more perfectly it accomplishes its ends; but in doing so, it only changes the seat of authority, without counteracting, in the least, the tendency of the government to oppression and abuse of its powers.

If the whole community had the same interest, so that the interests of each and every portion would be so affected by the action of the government, that the laws which oppressed or impoverished one portion, would necessarily oppress and impoverish all others,—or the reverse,—then the right of suffrage, of itself, would be all-sufficient to counteract the tendency of the government to oppression and abuse of its powers; and, of course, would form, of itself, a perfect constitutional government. The interest of all being the same, by supposition, as far as the action of the government was concerned, all would have like interests as to what laws should be made, and how they should be executed. All strife and struggle would cease as to who should be elected to make and execute them. The only question would be, who was most fit; who the wisest and most capable of understanding the common interest of the whole. This decided, the election would pass off quietly, and without party discord; as no one portion could advance its own peculiar interest without regard to the rest, by electing a favorite candidate.

But such is not the case. On the contrary, nothing is more difficult than to equalize the action of the government, in reference to the various and diversified interests of the community; and nothing more easy than to pervert its powers into instruments to aggrandize and enrich one or more interests by oppressing and impoverishing the others; and this too, under the operation of laws, couched in general terms;—and which, on their face, appear

fair and equal. Nor is this the case in some particular communities only. It is so in all; the small and the great,—the poor and the rich,—irrespective of pursuits, productions, or degrees of civilization;—with, however, this difference, that the more extensive and populous the country, the more diversified the condition and pursuits of its population, and the richer, more luxurious and dissimilar the people, the more difficult is it to equalize the action of the government,—and the more easy for one portion of the community to pervert its powers to oppress, and plunder the other.

Such being the case, it necessarily results, that the right of suffrage, by placing the control of the government in the community must, from the same constitution of our nature which makes government necessary to preserve society, lead to conflict among its different interests,—each striving to obtain possession of its powers, as the means of protecting itself against the others;—or of advancing its respective interests, regardless of the interests of others. For this purpose, a struggle will take place between the various interests to obtain a majority, in order to control the government. If no one interest be strong enough, of itself, to obtain it, a combination will be formed between those whose interests are most alike;—each conceding something to the others, until a sufficient number is obtained to make a majority. The process may be slow, and much time may be required before a compact, organized majority can be thus formed; but formed it will be in time, even without preconcert or design, by the sure workings of that principle or constitution of our nature in which government itself originates. When once formed, the community will be divided into two great parties,—a major and minor,—between which there will be incessant struggles on the one side to retain, and on the other to obtain the majority,—and, thereby, the control of the government and the advantages it confers. . . .

[21] The necessary result, then of the unequal fiscal action of the government is, to divide the community into two great classes; one consisting of those who, in reality, pay the taxes, and, of course, bear exclusively the burthen of supporting the government; and the other, of those who are the recipients of their proceeds, through disbursements, and who are, in fact, supported by the government; or, in fewer words, to divide it into tax-payers and tax-consumers.

But the effect of this is to place them in antagonistic relations,

in reference to the fiscal action of the government, and the entire course of policy therewith connected. For, the greater the taxes and disbursements, the greater the gain of the one and the loss of the other,—and *vice versa;* and consequently, the more the policy of the government is calculated to increase taxes and disbursements, the more it will be favored by the one and opposed by the other.

The effect, then, of every increase is, to enrich and strengthen the one and impoverish and weaken the other. This, indeed, may be carried to such an extent, that one class or portion of the community may be elevated to wealth and power, and the other depressed to abject poverty and dependence, simply by the fiscal action of the government; and this too, through disbursements only,—even under a system of equal taxes imposed for revenue only. If such may be the effect of taxes and disbursements, when confined to their legitimate objects,—that of raising revenue for the public service,—some conception may be formed, how one portion of the community may be crushed, and another elevated on its ruins, by systematically perverting the power of taxation and disbursement, for the purpose of aggrandizing and building up one portion of the community at the expense of the other. That it *will* be so used, unless prevented, is, from the constitution of man, just as certain as that it *can* be so used; and that, if not prevented, it must give rise to two parties, and to violent conflicts and struggles between them, to obtain and control of the government, is, for the same reason, not less certain. . . .

[24] As, then, the right of suffrage, without some other provision, cannot counteract this tendency of government, the next question for consideration is—What is that other provision? . . .

From what has been said, it is manifest, that this provision must be of a character calculated to prevent any one interest, or combination of interests, from using the powers of government to aggrandize itself at the expense of the others. Here lies the evil: and just in proportion as it shall prevent, or fail to prevent it, in the same degree it will effect, or fail to effect the end intended to be accomplished. There is but one certain mode in which this can be effected; and that is, by taking the sense of each interest or portion of the community, which may be unequally and injuriously affected by the action of the government, separately, through its own majority, or in some other way by which its voice may be

fairly expressed; and to require the consent of each interest, either to put or to keep the government in action. This too, can be accomplished only in one way,—and that is, by such an organism of the government,—and, if necessary for the purpose, of the community also,—as will, by dividing and distributing the powers of government, give to each division or interest, through its appropriate organ, either a concurrent voice in making and executing the laws, or a veto on their execution. It is only by such an organism, that the assent of each can be made necessary to put the government in motion; or the power made effectual to arrest its action, when put in motion;—and it is only by the one or the other that the different interests, orders, classes, or portions, into which the community may be divided, can be protected, and all conflict and struggle between them prevented,—by rendering it impossible to put or to keep it in action, without the concurrent consent of all.

Such an organism as this, combined with the right of suffrage, constitutes, in fact, the elements of constitutional government. The one by rendering those who make and execute the laws responsible to those on whom they operate, prevents the rulers from oppressing the ruled; and the other, by making it impossible for any one interest or combination of interests or class, or order, or portion of the community, to obtain exclusive control, prevents any one of them from oppressing the other. It is clear, that oppression and abuse of power must come, if at all, from the one or the other quarter. From no other can they come. It follows, that the two, suffrage and proper organism combined, are sufficient to counteract the tendency of government to oppression and abuse of power; and to restrict it to the fulfilment of the great ends for which it is ordained. . . .

[27] It may be readily inferred, from what has been stated, that the effect of organism is neither to supersede nor diminish the importance of the right of suffrage; but to aid and perfect it. The object of the latter is, to collect the sense of the community. The more fully and perfectly it accomplishes this, the more fully and perfectly it fulfils its end. But the most it can do, of itself, is to collect the sense of the greater number; that is, of the stronger interest, or combination of interests; and to assume this to be the sense of the community. It is only when aided by a proper organism, that it can collect the sense of the entire community,—of

each and all its interests; of each, through its appropriate organ, and the whole, through all of them united. This would truly be the sense of the entire community; for whatever diversity each interest might have within itself,—as all would have the same interest in reference to the action of the government, the individuals composing each would be fully and truly represented by its own majority or appropriate organ, regarded in reference to the other interests. . . .

[30] . . . . If the numerical majority were really the people; and if, to take its sense truly, were to take the sense of the people truly, a government so constituted would be a true and perfect model of a popular constitutional government; and every departure from it would detract from its excellence. But, as such is not the case,—as the numerical majority, instead of being the people, is only a portion of them,—such a government, instead of being a true and perfect model of the people's government, that is, a people self-governed, is but the government of a part over a part,—the major over the minor portion. . . .

There is another error, of a kindred character, whose influence contributes much to the same results: I refer to the prevalent opinion, that a written constitution, containing suitable restrictions on the powers of government, is sufficient, of itself, without the aid of any organism,—except such as is necessary to separate its several departments, and render them independent of each other,—to counteract the tendency of the numerical majority to oppression and the abuse of power.

A written constitution certainly has many and considerable advantages; but it is a great mistake to suppose, that the mere insertion of provisions to restrict and limit the powers of the government, without investing those for whose protection they are inserted with the means of enforcing their observance, will be sufficient to prevent the major and dominant party from abusing its powers. Being the party in possession of the government, they will, from the same constitution of man which makes government necessary to protect society, be in favor of the powers granted by the constitution, and opposed to the restrictions intended to limit them. As the major and dominant party, they will have no need of these restrictions for their protection. The ballot-box, of itself, would be ample protection to them. Needing no other, they would come, in time, to regard these limitations as unnecessary and improper

restraints;—and endeavor to elude them, with the view of increasing their power and influence. . . .

[34] Nor would the division of government into separate, and, as it regards each other independent departments, prevent this result. Such a division may do much to facilitate its operations, and to secure to its administration greater caution and deliberation; but as each and all the departments,—and, of course, the entire government,—would be under the control of the numerical majority, it is too clear to require explanation, that a mere distribution of its powers among its agents or representatives, could do little or nothing to counteract its tendency to oppression and abuse of power. To effect this, it would be necessary to go one step further, and make the several departments the organs of the distinct interests or portions of the community; and to clothe each with a negative on the others. But the effect of this would be to change the government from the numerical into the concurrent majority. . . .

[37] . . . . And, hence, the great and broad distinction between governments is,—not that of the one, the few, or the many, —but of the constitutional and the absolute.

From this there results another distinction, which, although secondary in its character, very strongly marks the difference between these forms of government. I refer to their respective conservative principle;—that is, the principle by which they are upheld and preserved. This principle, in constitutional governments, is *compromise;*—and in absolute governments, is *force.* . . .

It would, perhaps, be more strictly correct to trace the conservative principle of constitutional governments to the necessity which compels the different interests, or portions, or orders, to compromise,—as the only way to promote their respective prosperity, and to avoid anarchy,—rather than to the compromise itself. No necessity can be more urgent and imperious, than that of avoiding anarchy. It is the same as that which makes government indispensable to preserve society; and is not less imperative than that which compels obedience to superior force. Traced to this source, the voice of a people,—uttered under the necessity of avoiding the greatest of calamities, through the organs of a government so constructed as to suppress the expression of all partial and selfish interests, and to give a full and faithful utterance to the sense of the whole community, in reference to its common welfare,

—may, without impiety, be called the *voice of God*. To call any other so, would be impious. . . .

The conflict between the two parties, in the government of the numerical majority, tends necessarily to settle down into a struggle for the honors and emoluments of the government; and each, in order to obtain an object so ardently desired, will, in the process of the struggle, resort to whatever measure may seem best calculated to effect this purpose. The adoption, by the one, of any measure, however objectionable, which might give it an advantage, would compel the other to follow its example. In such case, it would be indispensable to success to avoid division and keep united;—and hence, from a necessity inherent in the nature of such governments, each party must be alternately forced, in order to insure victory, to resort to measures to concentrate the control over its movements in fewer and fewer hands, as the struggle became more and more violent. This, in process of time, must lead to party organization, and party caucuses and discipline; and these, to the conversion of the honors and emoluments of the government into means of rewarding partisan services, in order to secure the fidelity and increase the zeal of the members of the party. The effect of the whole combined, even in the earlier stages of the process, when they exert the least pernicious influence, would be to place the control of the two parties in the hands of their respective majorities; and the government itself, virtually, under the control of the majority of the dominant party, for the time, instead of the majority of the whole community;—where the theory of this form of government vests it. Thus, in the very first stage of the process the government becomes the government of a minority instead of a majority;—a minority, usually, and under the most favorable circumstances, of not much more than one-fourth of the whole community.

But the process, as regards the concentration of power, would not stop at this stage. The government would gradually pass from the hands of the majority of the party into those of its leaders; as the struggle became more intense, and the honors and emoluments of the government the all-absorbing objects. At this stage, principles and policy would lose all influence in the elections; and cunning, falsehood, deception, slander, fraud, and gross appeals to the appetites of the lowest and most worthless portions of the community, would take the place of sound reason and wise debate.

After these have thoroughly debased and corrupted the community, and all the arts and devices of party have been exhausted, the government would vibrate between the factions (for such will parties have become) at each successive election. Neither would be able to retain power beyond some fixed term; for those seeking office and patronage would become too numerous to be rewarded by the offices and patronage at the disposal of the government; and these being the sole objects of pursuit, the disappointed would, at the next succeeding election, throw their weight into the opposite scale, in the hope of better success at the next turn of the wheel. These vibrations would continue until confusion, corruption, disorder, and anarchy, would lead to an appeal to force;—to be followed by a revolution in the form of the government. Such must be the end of the government of the numerical majority; and such, in brief, the process through which it must pass, in the regular course of events, before it can reach it. . . .

[45] Among the other advantages which governments of the concurrent have over those of the numerical majority,—and which strongly illustrates their more popular character, is,—that they admit, with safety, a much greater extension of the right of suffrage. It may be safely extended in such governments to universal suffrage: that is,—to every male citizen of mature age, with few ordinary exceptions; but it cannot be so far extended in those of the numerical majority, without placing them ultimately under the control of the more ignorant and dependent portions of the community. For, as the community becomes populous, wealthy, refined, and highly civilized, the difference between the rich and the poor will become more strongly marked; and the number of the ignorant and dependent greater in proportion to the rest of the community. With the increase of this difference, the tendency to conflict between them will become stronger; and, as the poor and dependent become more numerous in proportion, there will be, in governments of the numerical majority, no want of leaders among the wealthy and ambitious, to excite and direct them in their efforts to obtain the control.

The case is different in governments of the concurrent majority. There, mere numbers have not the absolute control; and the wealthy and intelligent being identified in interest with the poor and ignorant of their respective portions or interests of the community, become their leaders and protectors. And hence, as

the latter would have neither hope nor inducement to rally the former in order to obtain the control, the right of suffrage, under such a government, may be safely enlarged to the extent stated, without incurring the hazard to which such enlargement would expose governments of the numerical majority.

In another particular, governments of the concurrent majority have greatly the advantage. I allude to the difference in their respective tendency, in reference to dividing or uniting the community. That of the concurrent, as has been shown, is to unite the community, let its interests be ever so diversified or opposed; while that of the numerical is to divide it into two conflicting portions, let its interests be, naturally, ever so united and identified. . . .

[54] The principle, in all communities, according to these numerous and various causes, assigns to power and liberty their proper spheres. To allow to liberty, in any case, a sphere of action more extended than this assigns, would lead to anarchy; and this, probably, in the end, to a contraction instead of an enlargement of its sphere. Liberty, then, when forced on a people unfit for it, would, instead of a blessing, be a curse; as it would, in its reaction, lead directly to anarchy,—the greatest of all curses. No people, indeed, can long enjoy more liberty than that to which their situation and advanced intelligence and morals fairly entitle them. If more than this be allowed, they must soon fall into confusion and disorder,—to be followed, if not by anarchy and despotism, by a change to a form of government more simple and absolute; and, therefore, better suited to their condition. And hence, although it may be true, that a people may not have as much liberty as they are fairly entitled to, and are capable of enjoying,—yet the reverse is unquestionably true,—that no people can long possess more than they are fairly entitled to.

Liberty, indeed, though among the greatest of blessings, is not so great as that of protection; inasmuch, as the end of the former is the progress and improvement of the race,—while that of the latter is its preservation and perpetuation. And hence, when the two come into conflict, liberty must and ever ought, to yield to protection; as the existence of the race is of greater moment than its improvement.

It follows, from what has been stated, that it is a great and dangerous error to suppose that all people are equally entitled to

liberty. It is a reward to be earned, not a blessing to be gratuitously lavished on all alike;—a reward reserved for the intelligent, the virtuous and deserving;—and not a boon to be bestowed on a people too ignorant, degraded and vicious, to be capable either of appreciating or of enjoying it. Nor is it any disparagement to liberty, that such is and ought to be the case. On the contrary, its greatest praise,—its proudest distinction is, that an all-wise Providence has reserved it, as the noblest and highest reward for the development of our faculties, moral and intellectual. A reward more appropriate than liberty could not be conferred on the deserving;—nor a punishment inflicted on the undeserving more just, than to be subject to lawless and despotic rule. This dispensation seems to be the result of some fixed law;—and every effort to disturb or defeat it, by attempting to elevate a people in the scale of liberty, above the point to which they are entitled to rise, must ever prove abortive, and end in disappointment. The progress of a people rising from a lower to a higher point in the scale of liberty, is necessarily slow;—and by attempting to precipitate, we either retard, or permanently defeat it.

There is another error, not less great and dangerous, usually associated with the one which has just been considered. I refer to the opinion, that liberty and equality are so intimately united, that liberty cannot be perfect without perfect equality.

That they are united to a certain extent,—and that equality of citizens, in the eyes of the law, is essential to liberty in a popular government, is conceded. But to go further, and make equality of *condition* essential to liberty, would be to destroy both liberty and progress. The reason is, that inequality of condition, while it is a necessary consequence of liberty, is, at the same time, indispensable to progress. In order to understand why this is so, it is necessary to bear in mind, that the main spring to progress is, the desire of individuals to better their condition; and that the strongest impulse which can be given to it is, to leave individuals free to exert themselves in the manner they may deem best for that purpose, as far at least as it can be done consistently with the ends for which government is ordained,—and to secure to all the fruits of their exertions. Now, as individuals differ greatly from each other, in intelligence, sagacity, energy, perseverance, skill, habits of industry and economy, physical power, position and opportunity,—the necessary effect of leaving all free to exert themselves to better

their condition, must be a corresponding inequality between those who may possess these qualities and advantages in a high degree, and those who may be deficient in them.

The only means by which this result can be prevented are, either to impose such restrictions on the exertions of those who may possess them in a high degree, as will place them on a level with those who do not; or to deprive them of the fruits of their exertions. But to impose such restrictions on them would be destructive of liberty,—while, to deprive them of the fruits of their exertions, would be to destroy the desire of bettering their condition. It is, indeed, this inequality of condition between the front and rear ranks, in the march of progress, which gives so strong an impulse to the former to maintain their position, and to the latter to press forward into their files. This gives to progress its greatest impulse. To force the front rank back to the rear, or attempt to push forward the rear into line with the front, by the interposition of the government, would put an end to the impulse, and effectually arrest the march of progress.

These great and dangerous errors have their origin in the prevalent opinion that all men are born free and equal;—than which nothing can be more unfounded and false. It rests upon the assumption of a fact, which is contrary to universal observation, in whatever light it may be regarded. It is, indeed, difficult to explain how an opinion so destitute of all sound reason ever could have been so extensively entertained, unless we regard it as being confounded with another, which has some semblance of truth;—but which, when properly understood, is not less false and dangerous. I refer to the assertion, that all men are equal in the state of nature; meaning, by a state of nature, a state of individuality, supposed to have existed prior to the social and political state; and in which men lived apart and independent of each other. If such a state ever did exist, all men would have been, indeed, free and equal in it; that is, free to do as they pleased, and exempt from the authority or control of others—as, by supposition, it existed anterior to society and government. But such a state is purely hypothetical. It never did, nor can exist; as it is inconsistent with the preservation and perpetuation of the race. It is, therefore, a great misnomer to call it *the state of nature.* Instead of being the natural state of man, it is, of all conceivable states, the most opposed to his nature—most repugnant to his feelings, and most

incompatible with his wants. His natural state is, the social and political—the one for which his Creator made him, and the only one in which he can preserve and perfect his race. As, then, there never was such a state as the, so called, state of nature, and never can be, it follows, that men, instead of being born in it, are born in the social and political state; and of course, instead of being born free and equal, are born subject, not only to parental authority, but to the laws and institutions of the country where born, and under whose protection they draw their first breath. . . .

The concurrent majority, then, is better suited to enlarge and secure the bounds of liberty, because it is better suited to prevent government from passing beyond its proper limits, and to restrict it to its primary end,—the protection of the community. But in doing this, it leaves, necessarily, all beyond it open and free to individual exertions; and thus enlarges and secures the sphere of liberty to the greatest extent which the condition of the community will admit, as has been explained. The tendency of government to pass beyond its proper limits is what exposes liberty to danger, and renders it insecure; and it is the strong counteraction of governments of the concurrent majority to this tendency of government which makes them so favorable to liberty. On the contrary, those of the numerical, instead of opposing and counteracting this tendency add to it increased strength, in consequence of the violent party struggles incident to them, as has been fully explained. And hence their encroachment on liberty, and the danger to which it is exposed under such governments.

So great, indeed, is the difference between the two in this respect, that liberty is little more than a name under all governments of the absolute form, including that of the numerical majority; and can only have a secure and durable existence under those of the concurrent or constitutional form. The latter, by giving to each portion of the community which may be unequally affected by its action, a negative on the others, prevents all partial or local legislation, and restricts its action to such measures as are designed for the protection and the good of the whole. In doing this, it secures, at the same time, the rights and liberty of the people, regarded individually; as each portion consists of those who, whatever may be the diversity of interests among themselves, have the same interest in reference to the action of the government. . . .

[64] Such are the many and striking advantages of the concurrent over the numerical majority. Against the former but two objections can be made. The one is, that it is difficult of construction, which has already been sufficiently noticed; and the other, that it would be impracticable to obtain the concurrence of conflicting interests, where they were numerous and diversified; or, if not, that the process for this purpose, would be too tardy to meet, with sufficient promptness, the many and dangerous emergencies, to which all communities are exposed. This objection is plausible; and deserves a fuller notice than it has yet received.

The diversity of opinion is usually so great, on almost all questions of policy, that it is not surprising, on a slight view of the subject, it should be thought impracticable to bring the various conflicting interests of a community to unite on any one line of policy;—or, that a government, founded on such a principle, would be too slow in its movements and too weak in its foundation to succeed in practice. But, plausible as it may seem at the first glance, a more deliberate view will show, that this opinion is erroneous. It is true, that, when there is no urgent necessity, it is difficult to bring those who differ, to agree on any one line of action. Each will naturally insist on taking the course he may think best;—and, from pride of opinion, will be unwilling to yield to others. But the case is different when there is an urgent necessity to unite on some common course of action; as reason and experience both prove. When something *must* be done,—and when it can be done only by the united consent of all,—the necessity of the case will force to a compromise;—be the cause of that necessity, what it may. On all questions of acting, necessity, where it exists, is the overruling motive; and where, in such cases, compromise among the parties is an indispensable condition to acting, it exerts an overruling influence in predisposing them to acquiesce in some one opinion or course of action. Experience furnishes many examples in confirmation of this important truth. Among these, the trial by jury is the most familiar, and on that account, will be selected for illustration.

In these, twelve individuals, selected without discrimination, must unanimously concur in opinion,—under the obligations of an oath to find a true verdict, according to law and evidence; and this, too, not unfrequently under such great difficulty and doubt, that the ablest and most experienced judges and advocates differ

in opinion, after careful examination. And yet, as impracticable as this mode of trial would seem to a superficial observer, it is found, in practice, not only to succeed, but to be the safest, the wisest and the best that human ingenuity has ever devised. When closely investigated, the cause will be found in the necessity, under which the jury is placed, to agree unanimously, in order to find a verdict. This necessity acts as the predisposing cause of concurrence in some common opinion; and with such efficacy, that a jury rarely fails to find a verdict. . . .

[67] But the same cause would act with still greater force in predisposing the various interests of the community to agree in a well organized government, founded on the concurrent majority. The necessity for unanimity, in order to keep the government in motion, would be far more urgent, and would act under circumstances still more favorable to secure it. It would be superfluous, after what has been stated, to add other reasons in order to show that no necessity, physical or moral, can be more imperious than that of government. It is so much so that, to suspend its action altogether, even for an inconsiderable period, would subject the community to convulsions and anarchy. But in governments of the concurrent majority such fatal consequences can only be avoided by the unanimous concurrence or acquiescence of the various portions of the community. Such is the imperious character of the necessity which impels to compromise under governments of this description. . . .

[69] But to form a juster estimate of the full force of this impulse to compromise, there must be added that, in governments of the concurrent majority, each portion, in order to advance its own peculiar interests, would have to conciliate all others, by showing a disposition to advance theirs; and, for this purpose, each would select those to represent it, whose wisdom, patriotism, and weight of character, would command the confidence of the others. Under its influence,—and with representatives so well qualified to accomplish the object for which they were selected,—the prevailing desire would be, to promote the common interests of the whole; and, hence, the competition would be, not which should yield the least to promote the common good, but which should yield the most. It is thus, that concession would cease to be considered a sacrifice,—would become a free-will offering on the altar of the country, and lose the name of compromise. And herein is to be

found the feature, which distinguishes governments of the concurrent majority so strikingly from those of the numerical. In the latter, each faction, in the struggle to obtain the control of the government, elevates to power the designing, the artful, and unscrupulous, who, in their devotion to party,—instead of aiming at the good of the whole,—aim exclusively at securing the ascendency of party.

When traced to its course, this difference will be found to originate in the fact, that, in governments of the concurrent majority, individual feelings are, from its organism, necessarily enlisted on the side of the social, and made to unite with them in promoting the interests of the whole, as the best way of promoting the separate interests of each; while in those of the numerical majority, the social are necessarily enlisted on the side of the individual, and made to contribute to the interest of parties, regardless of that of the whole. To effect the former,—to enlist the individual on the side of the social feelings to promote the good of the whole, is the greatest possible achievement of the science of government; while, to enlist the social on the side of the individual to promote the interest of parties at the expense of the good of the whole is the greatest blunder which ignorance can possibly commit.

To this, also, may be referred the greater solidity of foundation on which governments of the concurrent majority repose. Both ultimately, rest on necessity; for force, by which those of the numerical majority are upheld, is only acquiesced in from necessity; a necessity not more imperious, however, than that which compels the different portions, in governments of the concurrent majority, to acquiesce in compromise. There is, however, a great difference in the motive, the feeling, the aim, which characterize the act in the two cases. In the one, it is done with that reluctance and hostility ever incident to enforced submission to what is regarded as injustice and oppression; accompanied by the desire and purpose to seize on the first favorable opportunity for resistance:—but in the other, willingly and cheerfully, under the impulse of an exalted patriotism, impelling all to acquiesce in whatever the common good requires.

It is, then, a great error to suppose that the government of the concurrent majority is impracticable;—or that it rests on a feeble foundation. History furnishes many examples of such governments;—and among them, one, in which the principle was carried

to an extreme that would be thought impracticable, had it never existed. I refer to that of Poland. In this it was carried to such an extreme that, in the election of her kings, the concurrence or acquiescence of every individual of the nobles and gentry present, in an assembly numbering usually from one hundred and fifty to two hundred thousand, was required to make a choice; thus giving to each individual a veto on his election. So, likewise, every member of her Diet, (the supreme legislative body,) consisting of the king, the senate, bishops and deputies of the nobility and gentry of the palatinates, possessed a veto on all its proceedings;—thus making an unanimous vote necessary to enact a law, or to adopt any measure whatever. And, as if to carry the principle to the utmost extent, the veto of a single member not only defeated the particular bill or measure in question, but prevented all others, passed during the session, from taking effect. Further, the principle could not be carried. It, in fact, made every individual of the nobility and gentry, a distinct element in the organism;—or, to vary the expression, made him an *Estate of the kingdom*. And yet this government lasted, in this form, more than two centuries; embracing the period of Poland's greatest power and renown. Twice, during its existence, she protected Christendom, when in great danger, by defeating the Turks under the walls of Vienna, and permanently arresting thereby the tide of their conquests westward.

It is true her government was finally subverted, and the people subjugated, in consequence of the extreme to which the principle was carried; not, however, because of its tendency to dissolution *from weakness*, but from the facility it afforded to powerful and unscrupulous neighbors to control, by their intrigues, the election of her kings. But the fact, that a government, in which the principle was carried to the utmost extreme, not only existed, but existed for so long a period, in great power and splendor, is proof conclusive both of its practicability and its compatibility with the power and permanency of government.

Another example, not so striking indeed, but yet deserving notice, is furnished by the government of a portion of the aborigines of our own country. I refer to the Confederacy of the Six Nations, who inhabited what now is called the western portion of the State of New-York. One chief delegate, chosen by each nation,—associated with six others of his own selection,—and mak-

ing, in all, forty-two members,—constituted their federal, or general government. When met, they formed the council of the union,—and discussed and decided all questions relating to the common welfare. As in the Polish Diet, each member possessed a veto on its decision; so that nothing could be done without the united consent of all. But this, instead of making the Confederacy weak, or impracticable, had the opposite effect. It secured harmony in council and action, and with them a great increase of power. The Six Nations, in consequence, became the most powerful of all the Indian tribes within the limits of our country. They carried their conquest and authority far beyond the country they originally occupied. . . .

It may be thought,—and doubtless many have supposed, that the defects inherent in the government of the numerical majority may be remedied by a free press, as the organ of public opinion,—especially in the more advanced stage of society,—so as to supersede the necessity of the concurrent majority to counteract its tendency to oppression and abuse of power. It is not my aim to detract from the importance of the press, nor to underestimate the great power and influence which it has given to public opinion. On the contrary, I admit these are so great, as to entitle it to be considered a new and important political element. Its influence is, at the present day, on the increase; and it is highly probable that it may, in combination with the causes which have contributed to raise it to its present importance, effect, in time, great changes,—social and political. But, however important its present influence may be, or may hereafter become,—or, however great and beneficial the change to which it may ultimately lead, it can never counteract the tendency of the numerical majority to the abuse of power,—nor supersede the necessity of the concurrent, as an essential element in the formation of constitutional governments. These it cannot effect for two reasons, either of which is conclusive.

The one is, that it cannot change that principle of our nature, which makes constitutions necessary to prevent government from abusing its powers,—and government necessary to protect and perfect society.

Constituting, as this principle does, an essential part of our nature,—no increase of knowledge and intelligence, no enlargement of our sympathetic feelings, no influence of education, or

modification of the condition of society can change it. But so long as it shall continue to be an essential part of our nature, so long will government be necessary; and so long will constitutions, also, be necessary to counteract its tendency to the abuse of power,—and so long must the concurrent majority remain an essential element in the formation of constitutions. . . .

The other reason is to be found in the nature of the influence, which the press politically exercises.

It is similar, in most respects, to that of suffrage. They are, indeed, both organs of public opinion. The principal difference is, that the one has much more agency in forming public opinion, while the other gives a more authentic and authoritative expression to it. Regarded in either light, the press cannot, of itself, guard any more against the abuse of power, than suffrage; and for the same reason.

If what is called public opinion were always the opinion of the whole community, the press would, as its organ, be an effective guard against the abuse of power, and supersede the necessity of the concurrent majority; just as the right of suffrage would do, where the community, in reference to the action of government, had but one interest. But such is not the case. On the contrary, what is called public opinion, instead of being the united opinion of the whole community, is, usually, nothing more than the opinion or voice of the strongest interest, or combination of interests; and, not unfrequently, of a small, but energetic and active portion of the whole. . . .

[91] I shall, in conclusion, proceed to exemplify the elementary principles, which have been established, by giving a brief account of the origin and character of the governments of Rome and Great Britain; the two most remarkable and perfect of their respective forms of constitutional governments. . . .

[104] The constitutions of both rest on the same principle;—an organism by which the voice of each order or class is taken through its appropriate organ; and which requires the concurring voice of all to constitute that of the whole community. The effects, too, were the same in both;—to unite and harmonize conflicting interests;—to strengthen attachments to the whole community, and to moderate that to the respective orders or classes; to rally all, in the hour of danger, around the standard of their country; to elevate the feeling of nationality, and to develop power, moral and

physical, to an extraordinary extent. Yet each has its distinguishing features, resulting from the difference of their organisms, and the circumstances in which they respectively originated. . . .

A DISCOURSE ON THE CONSTITUTION AND GOVERNMENT OF THE UNITED STATES [1]

1851

For the most part the *Discourse* contains only the arguments for state sovereignty made popular by Jefferson, Tucker, Taylor, Upshur, and many others. The brief extract given here includes nearly all of the theories and proposals which are peculiar to Calhoun.

[145] It is only by considering the granted powers, in their true character of trust or delegated powers, that all the various parts of our complicated system of government can be harmonized and explained. Thus regarded, it will be easy to perceive how the people of the several States could grant certain powers to a joint,—or, as its framers called it,—a general government, in trust, to be exercised for their common benefit, without an absolute surrender of them;—or without impairing their independence and sovereignty. Regarding them in the opposite light, as powers absolutely surrendered and irrevocably transferred, inexplicable difficulties present themselves. Among the first, is that which springs from the idea of divided sovereignty; involving the perplexing question,—how the people of the several States can be partly sovereign, and partly, *not* sovereign,—sovereign as to the reserved,—and not sovereign, as to the delegated powers? There is no difficulty in understanding how powers, appertaining to sovereignty, may be divided; and *the exercise* of one portion delegated to one set of agents, and another portion to another: or how sovereignty may be vested in one man, or in a few, or in many. But how sovereignty itself—the supreme power—can be divided,—how the people of the several states can be partly sovereign, and partly *not* sovereign—partly supreme, and partly *not* supreme, it is impossible to conceive. Sovereignty is an entire thing;—to divide, is,—to destroy it.

But suppose this difficulty surmounted;—another not less per-

[1] *The Works of John C. Calhoun.* Vol. I.

plexing remains. If sovereignty be surrendered and transferred, in part or entirely, by the several States, it must be transferred to somebody; and the question is, to whom? Not, certainly, to the government,—as has been thoughtlessly asserted by some; for that would subvert the fundamental principle of our system,—that sovereignty resides in the people. But if not to the government, it must be transferred,—if at all,—to the people, regarded in the aggregate, as a nation. But this is opposed, not only by a force of reason which cannot be resisted, but by the preamble and tenth amended article of the constitution, as has just been shown. If then it be transferred neither to the one nor the other, it cannot be transferred at all; as it is impossible to conceive to whom else the transfer could have been made. It must, therefore, and of course, remain unsurrendered and unimpaired in the people of the several States;—to whom, it is admitted, it appertained when the constitution was adopted. . . .

[297] Now it is a clear and well established principle, that the party who claims the right to exercise a power, is bound to make it good, against the party denying the right; and that, if there should be an authority higher than either provided, by which the question between them can be adjusted, he, in such case, has no right to assert his claim on his own authority,—but is bound to appeal to the tribunal appointed, according to the forms prescribed, and to establish and assert his right through its authority.

If a principle, so clear and well established, should, in a case like the one supposed, require confirmation,—it may be found in the fact, that the powers of the federal government are all enumerated and specified in the constitution;—while those belonging to the states embrace the whole residuary mass of powers, not enumerated and specified. Hence, in a conflict of power between the two, the presumption is in favor of the latter, and against the former; and, therefore, it is doubly bound to establish the power in controversy, through the appointed authority, before it can rightfully undertake to exercise it. . . .

[300] . . . . But if it transcends the limits of the amending power,—be consistent with the character of the constitution and the ends for which it was established,—or with the nature of the system,—the result is different. In such case, the State is not bound to acquiesce. It may choose whether it will, or whether it

will not secede from the Union. One or the other course it must take. To refuse acquiescence, would be tantamount to secession; and place it as entirely in the relation of a foreign State to the other States, as would a positive act of secession. That a State, as a party to the constitutional compact, has the right to secede,—acting in the same capacity in which it ratified the constitution,—cannot, with any show of reason, be denied by any one who regards the constitution as a compact,—if a power should be inserted by the amending power, which would radically change the character of the constitution, or the nature of the system; or if the former should fail to fulfil the ends for which it was established. This results, necessarily, from the nature of a compact,—where the parties to it are sovereign; and, of course, have no higher authority to which to appeal. That the effect of secession would be to place her in the relation of a foreign State to the others, is equally clear. Nor is it less so, that it would make her, (not her citizens *individually*,) responsible to them, in that character. All this results, necessarily, from the nature of a compact between sovereign parties. . . .

[387] But the restoration of the government to its federal character, however entire and perfect it may be,—will not, of itself, be sufficient to avert the evil alternatives,—to the one or the other of which it must tend, as it is now operating. Had its federal character been rigidly maintained in practice from the first, it would have been all sufficient, in itself, to have secured the country against the dangerous condition in which it is now placed, in consequence of a departure from it. But the means which may be sufficient to *prevent* disease, are not usually sufficient to *remedy* them. In slight cases of recent date, they may be;—but additional means are necessary to restore health, when the system has been long and deeply disordered. Such, at present, is the condition of our political system. The very causes which have occasioned its disorders, have, at the same time, led to consequences, not to be removed by the means which would have prevented them. They have destroyed the equilibrium between the two great sections, and alienated that mutual attachment between them, which led to the formation of the Union, and the establishment of a common government for the promotion of the welfare of all.

When the government of the United States was established, the

two sections were nearly equal in respect to the two elements of which it is composed; a fact which, doubtless, had much influence, in determining the convention to select them as the basis of its construction. Since then, their equality in reference to both, has been destroyed, mainly through the action of the government established for their mutual benefit. . . .

[391] The nature of the disease is such, that nothing can reach it, short of some organic change,—a change which shall so modify the constitution, as to give to the weaker section, in some one form or another, a negative on the action of the government. Nothing short of this can protect the weaker, and restore harmony and tranquillity to the Union, by arresting, effectually, the tendency of the dominant and stronger section to oppress the weaker. When the constitution was formed, the impression was strong, that the tendency to conflict would be between the larger and smaller States; and effectual provisions were, accordingly, made to guard against it. But experience has proved this to have been a mistake; and that, instead of being, as was then supposed, the conflict is between the two great sections, which are so strongly distinguished by their institutions, geographical character, productions and pursuits. Had this been then as clearly perceived as it now is, the same jealousy which so vigilantly watched and guarded against the danger of the larger States oppressing the smaller, would have taken equal precaution to guard against the same danger between the two sections. It is for us, who see and feel it, to do, what the framers of the constitution would have done, had they possessed the knowledge, in this respect, which experience has given to us;—that is,—provide against the dangers which the system has practically developed; and which, had they been foreseen at the time, and left without guard, would undoubtedly have prevented the States, forming the southern section of the confederacy, from ever agreeing to the constitution; and which, under like circumstances, were they now out of, would for ever prevent them from entering into, the Union.

How the constitution could best be modified, so as to effect the object, can only be authoritatively determined by the amending power. It may be done in various ways. Among others, it might be effected through a reorganization of the executive department; so that its powers, instead of being vested, as they now are, in a single officer, should be vested in two;—to be so elected, as that

the two should be constituted the special organs and representatives of the respective sections, in the executive department of the government; and requiring each to approve all the acts of Congress before they shall become laws. One might be charged with the administration of matters connected with the foreign relations of the country;—and the other, of such as were connected with its domestic institutions; the selection to be decided by lot. It would thus effect, more simply, what was intended by the original provisions of the constitution, in giving to one of the majorities composing the government, a decided preponderance in the electoral college,—and to the other majority a still more decided influence in the eventual choice,—in case the college failed to elect a President. It was intended to effect an equilibrium between the larger and smaller States in this department,—but which, in practice, has entirely failed; and, by its failure, done much to disturb the whole system, and to bring about the present dangerous state of things.

Indeed, it may be doubted, whether the framers of the constitution did not commit a great mistake, in constituting a single, instead of a plural executive. Nay, it may even be doubted whether a single chief magistrate,—invested with all the powers properly appertaining to the executive department of the government, as is the President,—is compatible with the permanence of a popular government; especially in a wealthy and populous community, with a large revenue and a numerous body of officers and employees. Certain it is, that there is no instance of a popular government so constituted, which has long endured. Even ours, thus far, furnishes no evidence in its favor, and not a little against it; for, to it, the present disturbed and dangerous state of things, which threatens the country with monarchy, or disunion, may be justly attributed. On the other hand, the two most distinguished constitutional governments of antiquity, both in respect to permanence and power, had a dual executive. I refer to those of Sparta and of Rome. The former had two hereditary, and the latter two elective chief magistrates. It is true, that England, from which ours, in this respect, is copied, has a single hereditary head of the executive department of her government;—but it is not less true, that she has had many and arduous struggles, to prevent her chief magistrate from becoming absolute; and that, to guard against it effectually, she was finally compelled to divest

him, substantially, of the power of administering the government, by transferring it, practically, to a cabinet of responsible ministers, who, by established custom, cannot hold office, unless supported by a majority of the two houses of Parliament. She has thus avoided the danger of the chief magistrate becoming absolute; and contrived to unite, substantially, a single with a plural executive, in constituting that department of her government. We have no such guard, and can have none such, without an entire change in the character of our government; and her example, of course, furnished no evidence in favor of a single chief magistrate in a popular form of government like ours,—while the examples of former times, and our own thus far, furnish strong evidence against it.

But it is objected that a plural executive necessarily leads to intrigue and discord among its members; and that it is inconsistent with prompt and efficient action. This may be true, when they are all elected by the same constituency; and may be a good reason, where this is the case, for preferring a single executive, with all its objections, to a plural executive. But the case is very different where they are elected by different constituencies,—having conflicting and hostile interests; as would be the fact in the case under consideration. Here the two would have to act, concurrently, in approving the acts of Congress,—and, separately, in the sphere of their respective departments. The effect, in the latter case, would be, to retain all the advantages of a single executive, as far as the administration of the laws were concerned; and, in the former, to insure harmony and concord between the two sections, and, through them, in the government. For as no act of Congress could become a law without the assent of the chief magistrate representing both sections, each, in the elections, would choose the candidate, who, in addition to being faithful to its interests, would best command the esteem and confidence of the other section. And thus, the presidential election, instead of dividing the Union into hostile geographical parties, the stronger struggling to enlarge its powers, and the weaker to defend its rights,—as is now the case,—would become the means of restoring harmony and concord to the country and the government. It would make the Union a union in truth,—a bond of mutual affection and brotherhood;—and not a mere connection used by the stronger as the instrument of dominion and aggrandizement,—and submitted to

by the weaker only from the lingering remains of former attachment, and the fading hope of being able to restore the government to what it was originally intended to be, a blessing to all. . . .

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CHAPTER IX

SOME RECENT TENDENCIES

INTRODUCTION

In the years immediately following the Civil War there was an almost complete atrophy of political theory. The old issues seemed to be sufficiently well settled by the victory of the north and the adoption of the thirteenth, fourteenth, and fifteenth amendments to the Constitution so that Americans could turn their attention from political philosophy to the economic problems involved in the exploitation of the enormous resources secured by purchase and conquest and made available by the new mechanical inventions. To be sure, a few treatises on politics did appear, but these were ordinarily dull academic performances reflecting the ideas of the preceding generation of American political theorists or of the German idealists. In neither case did the works bear any very important relation to the problems of government which were the result of conditions produced by a changing political, economic, and social order. The agitation for civil service reform, begun early in the century, but not carried on at all vigorously until after 1865, furnished some material for political theorizing, but the speeches and writings on this subject did not advance beyond an attack upon the specific evils found in the spoils system and the proposal of certain definite reforms. In other words, this movement was important in the growth of American government but it was not made the starting point for a body of significant political theory. This and such other reform movements as the attack upon corrupt political "machines" did, however, stimulate the study of American government, and were instrumental in leading to the production of a number of really distinguished works of a descriptive and analytical

character, among them Wilson's *Congressional Government* (1885) and Bryce's *American Commonwealth* (1888). These books set a higher standard for studies of this kind than any similar ones since De Tocqueville's *Democracy in America*, and they have been followed by scores of works containing more or less admirable descriptions of the organization and operation of the American political system.

At about the same time extremely important developments were taking place in the closely related field of law, and particularly in constitutional law. The work of the United States Supreme Court in dealing with the problems of federal relations as these were made more important and more intricate by the conditions of a machine age, and in developing the principles of due process of law and liberty of contract, makes the study of constitutional opinions during the past fifty years one of great interest and significance to the student of American political thought. Selections from the leading cases are omitted from this volume not because they are irrelevant but rather because they are readily available in a number of case books on constitutional law and books of readings in constitutional history, and because no short group of selections could give an adequate view of their character and scope.

Since the Civil War there have been no great controversies like the Revolution, the adoption of the Constitution, or the slavery struggle to stimulate the production of works on political theory, but there have been a number of institutional developments which have had some influence and which will in all probability prove to be exceedingly important as causes of future political discussion. Two of these institutional tendencies seem particularly worthy of brief mention. In the first place there has been a considerable extension of the democratic machinery, e.g., the direct primary, the direct election of senators, and the initiative, referendum, and recall. These, coupled with the adoption of woman suffrage, would appear to be logical outgrowths of the democratic doctrine worked out during the preceding

generations, and the theoretical justification of them has hardly gone beyond ringing the changes on Lincoln's mystic formula—"government of the people, for the people, and by the people." In the second place there has been a rapid expansion of the number of functions performed by the governments. Obviously this is not the product of nor is it consistent with the thought of the earlier periods. The generally accepted older view was that the functions of government are few in number and simple in nature. This philosophy is summed up in Madison's statement that if men were perfect no government would be needed, and in Jackson's famous dictum that the offices of government are, or can and should be made sufficiently simple so that men of average ability and no experience can fill them satisfactorily. Such theories are unintelligible in the face of the socializing tendencies of the past forty years. And yet this change in institutions has been accompanied by surprisingly little attempt at philosophical explanation or justification.

The movement of political theory most nearly in accord with these institutional developments is generally termed the progressive movement. It was a movement which accepted without question the basic principles of American government and declared that what is needed is the extension and application of these principles to the particular problems at issue. The usual battle cry was "let the people rule." Neither the possibility nor the desirability of popular and even direct government by all of the people were seriously questioned. But while the progressive movement emphasized the need of democratizing the machinery of government, it also favored a number of extensions of government control and, more rarely, of government ownership and operation. The movement seems to have reached its climax during the years 1910–1915, and is fairly reflected in the extracts from the writings of La Follette, Roosevelt, Gompers, and Wilson, all of whom were, in one way or another, among the most important leaders of the movement for "progressive" legislation. The selections from the

writings of Root, Holmes, and Hoover illustrate types of argument advanced by those who do not entirely sympathize with such legislation. The movement has not yet spent its force, but it now seems that the old emphasis upon the principles of extreme democracy has begun to give way to a concentration upon the issue of public ownership or control of such enterprises as water power, public utilities, and rail roads, together with the advocacy of legislation in aid of the laboring class. A closely related tendency of the present time is that of reorganizing the machinery of government, and particularly that of the administrative branch, in such way as to deal more effectively with the complex problems produced by the expansion of government activities.

While most of the writings about politics during the past few years deal with contemporary detail in such fashion as to be of strictly contemporary importance, one may discern the beginnings of a political literature which is neither exclusively descriptive nor devoted to the controversies of the day. We are as yet, of course, unable to judge of the importance of these beginnings or to predict with any satisfaction the direction in which they point. Perhaps the most significant sign thus far in evidence is the willingness of a number of writers to call into question the basic assumptions of American polity. Whether the ideas of such writers as Henry Adams, Irving Babbitt, R. A. Cram, Walter Lippmann, and H. L. Mencken will prove to have been indicative of the swing of the pendulum or whether they will turn out to be merely the interesting ideas of individual political theorists who, each in his own way, find the traditional democratic dogma to have important shortcomings, remains to be discovered. Thus far there is no concerted or agreed upon line of attack common to these critics and, in general, the questions which they raise are more significant than the answers which they give to those questions. It can hardly be said that there is at present any school of political theory, unless it be that which accepts conventional ideas, or any very distinct conflict of political theories. But it is becoming in-

creasingly probable that neither the foundations nor the form of American political institutions will long be accepted without question. It is not beyond the realm of probabilities that within a few decades the older democratic theory, even in the form given it by the progressives, will be on the defensive.

Since the recent and contemporary writings of significance are almost invariably formidable books rather than slender pamphlets it is not possible to present within short compass so adequate a picture of contemporary diversities in political thinking as of the writings of the Revolutionary or constitutional periods. Furthermore, these books should be read in their entirety if one is to judge them with any thoroughness. Nevertheless, an attempt has been made, in the selections from the writings of Spargo, Lippmann, and Babbitt to illustrate some of the points of view from which traditional theories of democracy are being examined. And in the letter of Governor Smith we have an interesting contemporary variant of the problem which, three centuries ago, played such an important rôle in the making of political theory.

ROBERT M. LA FOLLETTE

Between 1880 and his death in 1925 La Follette was continuously engaged in running for and holding local, state, and national offices. During most of that period he was a leading exponent of the "progressive" movement in American politics. While this movement has never attained a developed political philosophy, it has generally supported a program calling for the extension of democratic political machinery and the regulation or ownership of certain forms of commerce and industry by the government.

THE DIRECT PRIMARY [1]

1898

Under our form of government the entire structure rests upon the nomination of candidates for office. This is the foundation

[1] Address at Ann Arbor, Michigan, March 12, 1898. Included in *The Political Philosophy of Robert M. La Follette*, compiled by Ellen Torelle. Madison, Wisconsin: The Robert M. La Follette Company, 1920. Pp. 29–30.

of the representative system. If bad men control the nominations we cannot have good government. Let us start right. The life principle of representative government is that those chosen to govern shall faithfully represent the governed. To insure this the representative must be chosen by those whom he is to represent. This is fundamental. A system built upon any other foundation is not a representative government. By no other means can it be established or maintained. The moment that any power or authority over the representative comes between him and those who have selected him to be their representative that moment he ceases to be their representative. His responsibility is at once transferred to the intervening power or authority. He becomes the trustee of this new authority and to it he must render account for his actions. It is vital then in representative government that no power or authority shall be permitted to come between the representative and those whom he is to represent. To secure this every complication of detail and method, in any system behind which such intruding power or authority might be concealed must be torn down and cast aside. The voter, and the candidate for nomination who desires to represent the voter, must be brought within reaching distance of each other, must stand face to face.

To accomplish this we must abolish the caucus and convention by law, place the nomination of all candidates in the hands of the people, adopt the Australian ballot and make all nominations by direct vote at a primary election.

With the nomination of all candidates absolutely in the control of the people, under a system that gives every member of a party equal voice in making that nomination, the public official who desires re-nomination will not dare to seek it, if he has served the machine and the lobby and betrayed the public trust; if he has violated the pledges of his party and swapped its declared principles to special interests for special favors.

But under a primary election the public official who has kept faith with the public can appeal to that public for its approval with confidence. He will then have every incentive to keep his official record clean. If he have no loftier standard than mere personal success he will nevertheless so administer his office as to earn the commendation "Well done thou good and faithful servant."

The nomination of all their candidates by the direct vote of the

people is the spirit, the very life of representative government. It is plain, simple, practical. It is their right. It will come. Whoever seeks to thwart or defeat it is an enemy of representative government. Let him beware! Whoever would control as the agent of the machine will encounter lasting defeat. Let him beware! The country is awakening, the people are aroused. They will have their own. The machine may obstruct, misdirected reform may temporize, but "be of good cheer, strengthen thine heart," the will of the people shall prevail. . . .

THE INITIATIVE, REFERENDUM, AND RECALL [1]

1914

For years the American people have been engaged in a terrific struggle with the allied forces of organized wealth and political corruption. Battles have been won and lost. The unequal contest goes on. The lesson is obvious. The people must have in reserve new weapons for every emergency, if they are to regain and preserve control of their government.

The forces of special privilege are deeply entrenched. Their resources are inexhaustible. Their efforts never lax. Their political methods are insidious. It is impossible for the people to maintain perfect organization in mass. They are often taken unawares and are liable to lose at one stroke the achievements of years of effort. In such a crisis nothing but the united power of the people expressed directly through the ballot can overthrow the enemy.

Through the initiative, referendum and recall the people in any emergency can absolutely control.

The initiative and referendum make it possible for them to demand a direct vote and repeal bad laws which have been enacted, or to enact by direct vote good measures which their representatives refuse to consider. The recall enables the people to dismiss from public service those representatives who dishonor their commissions by betraying the public interest. These measures will prove so effective a check against unworthy representatives that it will rarely be found necessary to invoke them.

Constitutions and statutes and all the complex details of gov-

[1] *La Follette's Magazine*, October, 17, 1914. *The Political Philosophy of Robert M. La Follette*, pp. 173–75.

ernment are but instruments created by the citizen for the orderly execution of his will. Whenever and wherever they fail, they will be so changed as to make them effective to execute and express the well-considered judgment of the citizen.

For over and above constitutions and statutes, and greater than all, is the supreme sovereignty of the people!

We need not fear, Mr. President. This is the people's government. They will not destroy it. They will not permit organized privilege to destroy its vital principle. They will restore and forever preserve it as a government that shall be truly representative of the will of the people.

They know that the initiative and referendum will place in the hands of the people the power to protect themselves against the mistakes or indifference of their representatives in the legislature. Then it will always be possible for the people to demand a direct vote and to repeal a bad law which the legislature has enacted, or to enact by direct vote a good measure which the legislature has refused to consider.

The recall will enable the people to dismiss from public service a representative whenever he shall cease to serve the public interest. Then no jack-pot politician can hold his office in defiance of the will of a constituency whose commission he has dishonored.

Wherever representative government fails, it fails because the representative proves incompetent or false to his trust. Intrenched in office for his full term, his constituency is powerless and must submit to misrepresentation. There is no way to correct his blunders or to protect against his betrayal. At the expiration of his service he may be replaced by another who will prove equally unworthy. The citizen is entitled to some check, some appeal, some relief, some method of halting and correcting the evils of misrepresentation and betrayal. . . .

A DEMOCRATIC PROGRAM [1]

1910

I believe in the intelligence and patriotism of the people of Wisconsin. I believe they are capable of self-government. The common, average judgment of the community is always wise, rational

[1] *Letter to Wisconsin Voters*, November 3, 1910. *The Political Philosophy of Robert M. La Follette*, pp. 175–78.

and trust-worthy. I would see them clothed with the largest power to say the final word as to the laws under which they are to live and the government they maintain.

The republican platform of Wisconsin is the strongest guarantee yet given for perpetuating self-government. If the pledges of the republican platform become the law of this state, government of the people, by the people, will be forever safe in Wisconsin.

A perfected primary law will insure majority nomination. Then the will of the majority can no longer suffer defeat through division of votes among several candidates representing the same principles.

A strong corrupt practice law will limit the use of money in elections. Then no man can buy political office and power in Wisconsin and the public service will be equally within the reach of all men.

Fellow citizens, if you would insure faithful and efficient administration of progressive legislation enacted in recent years,—the regulation of railway rates and services, the regulation of the rates and services of all public utilities, the collection of a just and reasonable tax upon all public-service corporations in this state, the rigid enforcement of the pure food and dairy statutes, the thorough inspection of factories, the strict enforcement of laws for the protection of the public health, the vigilant supervision of insurance, the advancement and support of our educational system, the proper care and management of our charitable and penal institutions—if you would secure the conservation and control of waterpower by the state for the benefit of all the people, the enactment of a graduated income tax law, home rule for cities, the benefits of a workmen's compensation statute, a thorough investigation of co-operative buying and selling, storage and warehousing as affecting the farmer and the consumer, co-operative credit and collective bargaining and arbitration between employers and employees,—if you approve of the course of the progressive representatives of Wisconsin in congress, their fight against a tariff bill that violated platform pledges and imposed ever increasing burdens upon the consumer, their struggle to frame a just and efficient postal savings bank law to serve the interests of the people rather than promote the interests of Wall Street, their successful labors in so reconstructing the railway rate bill as to make it a public benefit instead of a positive public in-

jury—if you would maintain Wisconsin as the leader of this great progressive movement to restore government to the people, then make the majority for the principles declared in this platform and for the candidates who really and truly represent those principles, the largest and most decisive ever recorded in the history of the state.

At no time in the last half century has there been such imperative reason for patriotic independence on the part of the American voter. The ballot is his weapon. He should use it everywhere independently, fearlessly. Teach both political parties that they can no longer play the voter for a fool. Strike down as an enemy of the republic any candidate of any party whose past record or present connection marks him as the agent of special interests. To seek to invoke in this hour of the life of American democracy the party spirit to maintain party solidarity, and to assure a party victory regardless of the relative merits of opposing candidates, regardless of a record of subserviency to privilege, is a surrender of every principle that has made the progressive movement the hope of millions. Let it go to the country on November eighth that Wisconsin places service to the public interest above service to any political party, and that her progressive leaders never betrayed their cause. Sometimes, mistaken in men, they have suffered humiliation and temporary reverses, but the leaders of the progressive movement and the great mass of the voters in Wisconsin, have kept the faith alike, and regardless of party, have fought a good fight, a successful fight to make state government in Wisconsin a real representative democracy. . . .

THE GREAT ISSUE [1]

1913

With the changing phases of a twenty-five year contest I have been more and more impressed with the deep underlying singleness of the issue. It is not railroad regulation. It is not the tariff, or conservation, or the currency. It is not the trusts. These and other questions are but manifestations of one great struggle. The supreme issue, involving all the others, is *the encroachment of*

[1] *La Follette's Autobiography.* Madison, Wisconsin: The Robert M. La Follette Company. 1913. Pp. 760–61.

the powerful few upon the rights of the many. This mighty power has come between the people and their government. Can we free ourselves from this control? Can representative government be restored? Shall we, with statesmanship and constructive legislation, meet these problems, or shall we pass them on, with all the possibilities of conflict and chaos, to future generations?

There never was a higher call to greater service than in this protracted fight for social justice. I believe, with increasing depth of conviction, that we will, in our day, meet our responsibility with fearlessness and faith; that we will reclaim and preserve for our children, not only the form but the spirit of our free institutions. And in our children must we rest our hope for the ultimate democracy.

The great issue before the American people to-day is the control of their own government.[2] In the midst of political struggle, it is not easy to see the historical relations of the present Progressive movement. But it represents a conflict as old as the history of man—the fight to maintain human liberty, the rights of all the people.

A mighty power has been builded up in this country in recent years, so strong, yet so insidious and far-reaching in its influence, that men are gravely inquiring whether its iron grip on government and business can ever be broken. Again and again it has proved strong enough to nominate the candidates of both political parties. It rules in the organization of legislative bodies, state and national, and of the committees which frame legislation. Its influence is felt in cabinets and in the policies of administrations, and is clearly seen in the appointment of prosecuting officers and the selection of judges upon the Bench.

In business it has crippled or destroyed competition. It has stifled individual initiative. It has fixed limitations in the field of production. It makes prices and imposes its burdens upon the consuming public at will.

In transportation, after a prolonged struggle for government control, it is, with only slight check upon its great power, still master of the highways of commerce.

[2] Speech delivered at the Annual Banquet of the Periodical Publishers Association, February 2, 1912. *Autobiography*, pp. 762–64.

In finance its power is unlimited. In large affairs it gives or withholds credit, and from time to time contracts or inflates the volume of the money required for the transaction of the business of the country, regardless of everything excepting its own profits.

It has acquired vast areas of the public domain, and is rapidly monopolizing the natural resources—timber, iron, coal, oil.

And this THING has grown up in a country where, under the Constitution and the law, the citizen is sovereign! . . .

SAMUEL GOMPERS

ANNUAL REPORT TO THE AMERICAN FEDERATION OF LABOR [1]

1898

Gompers was born in London in 1850 and came to New York in 1863 where he followed the trade of cigar-making. He soon became a prominent member of the International Cigar-makers Union and in 1882 was selected to be the first president of the American Federation of Labor. With the exception of one year he was the head of that organization until his death in 1924, and during this period he was the official spokesman of the largest group of organized labor in the United States. Thus far there have been many labor parties in American politics but no single party which really represented or was supported by such powerful organizations as the American Federation. However, this and other groups have exercised a very important influence on the trend of political and economic legislation. Their professed attitude has ordinarily been more nearly akin to one of expediency than to one of established policy, but, nevertheless, the underlying trend is that of sympathy for constitutional and legislative changes which improve the status and increase the political power of the laborer.

The trade unions not only discuss economic and social problems, but deal with them in a practical fashion calculated to bring about better conditions of life today, and thus fit the workers for the greater struggles for amelioration and emancipation yet to come.

No one having any conception of the labor problems—the strug-

[1] *Proceedings of the Eighteenth Annual Convention of the American Federation of Labor* held at Kansas City, Missouri, December 12th to 20th, 1898. Pp. 6–7.

gles of life—would for a moment entertain the notion, much less advise the workers, to abstain from the exercise of their political rights and their political power. On the contrary, trade union action upon the surface is economic action, yet there is no act which the trade unions can take but which in its effect is political.

But, in the exercise of the political power of the workers, that is, the casting of the ballot, we are sometimes urged to throw to the winds the experience and the tangible results of ages, and to hazard the interests of labor in a new era of political partisanship.

We want legislation in the interest of labor; we want legislation executed by labor men; we want trade unionists in Congress and more trade unionists in the State legislatures, in our municipal councils and in our executive offices; we want trade unionists on the magisterial benches, and those convinced of the justice of our cause, with the courage of their convictions, in the highest offices of our land. We shall secure them, too, by acting as trade unionists rather than turning our trade unions into partisan ward clubs.

Our movement is of the wage-earning class, recognizing that class interests, that class advancement, that class progress is best made by working class trade union action. That we shall receive the co-operation of others, goes without saying; but it is only as the trade unions grow in numbers, in power and in intelligence, shall we disenthrall the minds and freedom of action of sympathizers with our cause, who gladly await the hour to place the best sheaves of their laurels of learning at the feet of the advancing hosts of organized labor.

Spencer has said that it has always been the remnant in society which has saved it from reaction or barbarism. Today modern society is beginning to realize that the trade unions are the only hope of our civilization, and to regard them as the only power whose mission it is to evolve order out of our social chaos, to save us from reaction, brutality and perhaps barbarism. Our progress may be slow, yet it is the fastest, the safest and best evolved from the human mind, and even in its present form, is the germ of a future state which all will hail with glad acclaim. Then to nurture it, to concentrate our energies in order that its progress may be sure, that its advancement may be unimpeded, that its development may be unrestricted and its success unimpaired, is the duty of every intelligent worker, every lover of the human race.

The toilers of our country look to you to devise the ways and

means by which a more thorough organization of the wage earners may be accomplished, and to save our children in their infancy from being forced into the maelstrom of wage slavery. Let us see to it that they are not dwarfed in body and mind, or brought to a premature death by early drudgery, to give them the sunshine of the school-room and playground, instead of the factory and the workshop. To protect the workers in their inalienable rights to a higher and better life; to protect them, not only as equals before the law, but also in their rights to the product of their labor; to protect their lives, their limbs, their health, their homes, their firesides, their liberties as men, as workers, and as citizens; to overcome and conquer prejudice and antagonism; to secure to them the right to life, and the opportunity to maintain that life; the right to be full sharers in the abundance which is the result of their brain and brawn, and the civilization of which they are the founders and the mainstay; to this the workers are entitled beyond the cavil of a doubt. With nothing less ought they, or will they, be satisfied. The attainment of these is the glorious mission of the trade unions. No higher or nobler mission ever fell to the lot of a people than that committed to the working class—a class of which we have the honor to be members. . . .

REPORT OF 1912[1]

The Committee on President's Report at the Atlanta Convention made this strong declaration:

> "We renew our adherence to the principles of the initiative, referendum and recall, and we realize that these principles which we have long contended for are now being very generally accepted, and the last stand is being made upon the right of the recall of judges. We can not see the soundness of such a stand. Judges are like other men—good, bad, and indifferent. The selection of any man as a judge does not necessarily thereby change his character or make him infallible. It is not always possible to know in advance whether or not a person selected for a position is qualified to fill it, either mentally or morally, and whenever it becomes apparent that any

[1] *Report of the Proceedings of the Thirty-second Annual Convention of the American Federation of Labor* held at Rochester, New York, November 11 to 23, 1912. Pp. 40–41.

one who has been selected as a judge is incapable of meting out justice to all parties coming before him, the safety of society itself requires that he should be recalled."

The last eleven words of this concise declaration tell the concrete and exact truth, with the greatest possible dynamic force; they are worthy of repetition: "The safety of society itself requires that he should be recalled." This is a complete answer to all of the mythical tradition, glibly voiced by the "elder statesmen," those who would hurl the Constitution at every new thought and every proposition made in behalf of the welfare of the whole people. In their mental desperate straits to preserve inviolate the strong grip of "vested interests" and privilege, they bandy words and terms, in the effort to confuse the public mind by unwarrantably inveighing the Constitution against all economic, political, and legislative reform.

That great English statesman, William Ewart Gladstone, is credited with saying that the Constitution of the United States is the greatest work ever written by the hand of man. The organized labor movement accepts this as a truism, but it suggests the thought that the Constitution, good as it is, and wonderfully comprehensive as its provisions are, was not expected nor intended by its authors to extend to the people of the United States for all time; neither was it ratified by the people of the several States after presentation to them as the last word in the progress of human government. Indeed, that this is true is evidenced by the provisions in the Constitution itself by which that instrument can be changed.

We, who are the accredited responsible representatives of the producers of our country, take issue with those who, in the language of the gambler, "stand pat," and who refuse to see or expect any thing good in the minds and hearts of the present generation.

We say that for the safety of society itself, judges who are incapable of meting out justice should be recalled. This country, this Government of ours in America, belongs to the people who for the time being live in it—while they are alive. We have had enough of government by dead men—dead issues—dead principles, and iron-clad restrictions. We must expand and progress; we can not stand still. We must have restored to the people the unrestricted power of changing their statutory or organic laws

whenever they find the occasion and necessity warrant it, regardless of whether the "elder statesmen" should term it "the voice of clamor" or "the voice of the mob." As intelligent, aspiring American citizens, we resent such outrageous aspersions as are hurled at us when we urge humane social legislation, judicial restriction, and executive restraint.

The safety of society impels us to seek for ourselves the safest and sanest way to preserve our institutions. This can best be done by expanding the power of the people through direct legislation by means of the Initiative, the Referendum, and the Recall. How well this has been done, how much it is being done, and what splendid service the men of Labor have given to this scientific democratic system of government has been duly recorded in the *American Federationist* of August, September, October, November, 1912, and will probably be concluded in the December number. The story has been told either by our fellows in the States who were the pioneers in this movement, or it has been told by their closest associates, in plain, modest, unassuming terms, which are both a revelation and an inspiration. I hope that our membership generally will obtain as much gratification in reading these reports as it has afforded me to compile them. I rejoice in the fact that people generally are accepting our advice, and that great States like California and Ohio have recently adopted the system by an overwhelming vote of the people. But we must not rest, or allow ourselves to become contented, until we have secured in all of the States uniformity of government on the same basis as Oregon, Arizona, and California have set as the standard, in which popular government versus delegated government has been made supreme and the recall has been made applicable to all officials of government, including the judiciary. When that time comes we can feel safe and secure that the government of the people is in the hands of the people themselves; it will be completely and absolutely with no one to say them "nay," with no power, executive, legislative or judicial, to thwart their desires and intents in behalf of better and wiser humane social legislation and in behalf of the full and complete reign of human rights when property rights make the conflict. . . .

THEODORE ROOSEVELT

THE NEW NATIONALISM [1]

1910

Roosevelt's period of service as Civil Service Commissioner, Governor of New York, and President showed that he was in sympathy with the more moderate phases of the early progressive movement. His advocacy of somewhat more radical principles was manifested in his speaking tour in 1910 during which he defined the set of doctrines which led to the formation of the Progressive Party in 1912. This selection is from the key-note speech of that tour which was made at a gathering on the battlefield at Ossawatomie, Kansas.

[3] We come here to-day to commemorate one of the epoch-making events of the long struggle for the rights of man—the long struggle for the uplift of humanity. Our country—this great republic—means nothing unless it means the triumph of a real democracy, the triumph of popular government, and, in the long run, of an economic system under which each man shall be guaranteed the opportunity to show the best that there is in him. . . .

[9] In every wise struggle for human betterment one of the main objects, and often the only object, has been to achieve in large measure equality of opportunity. In the struggle for this great end, nations rise from barbarism to civilization, and through it people press forward from one stage of enlightenment to the next. One of the chief factors in progress is the destruction of special privilege. The essence of any struggle for healthy liberty has always been, and must always be, to take from some one man or class of men the right to enjoy power, or wealth, or position, or immunity, which has not been earned by service to his or their fellows. That is what you fought for in the Civil War, and that is what we strive for now. . . .

[11] I stand for the square deal. But when I say that I am for the square deal, I mean not merely that I stand for fair play under the present rules of the game, but that I stand for having those rules changed so as to work for a more substantial equality of opportunity and of reward for equally good service. . . .

Now, this means that our government, national and state, must be freed from the sinister influence or control of special interests.

[1] *The New Nationalism.* New York: The Outlook Company. 1910.

Exactly as the special interests of cotton and slavery threatened our political integrity before the Civil War, so now the great special business interests too often control and corrupt the men and methods of government for their own profit. We must drive the special interests out of politics. That is one of our tasks today. Every special interest is entitled to justice—full, fair, and complete,—and, now, mind you, if there were any attempt by mob violence to plunder and work harm to the special interest, whatever it may be, that I most dislike, and the wealthy man, whomsoever he may be, for whom I have the greatest contempt, I would fight for him, and you would if you were worth your salt. He should have justice. For every special interest is entitled to justice, but not one is entitled to a vote in Congress, to a voice on the bench, or to representation in any public office. The Constitution guarantees protection to property, and we must make that promise good. But it does not give the right of suffrage to any corporation.

The true friend of property, the true conservative, is he who insists that property shall be the servant and not the master of the commonwealth; who insists that the creature of man's making shall be the servant and not the master of the man who made it. The citizens of the United States must effectively control the mighty commercial forces which they have themselves called into being.

There can be no effective control of corporations while their political activity remains. To put an end to it will be neither a short nor an easy task, but it can be done.

We must have complete and effective publicity of corporate affairs, so that the people may know beyond peradventure whether the corporations obey the law and whether their management entitles them to the confidence of the public. It is necessary that laws should be passed to prohibit the use of corporate funds directly or indirectly for political purposes; it is still more necessary that such laws should be thoroughly enforced. Corporate expenditures for political purposes, and especially such expenditures by public service corporations, have supplied one of the principle sources of corruption in our political affairs.

It has become entirely clear that we must have government supervision of the capitalization, not only of public service corporations, including, particularly, railways, but of all corporations

doing an interstate business. I do not wish to see the nation forced into the ownership of the railways if it can possibly be avoided, and the only alternative is thoroughgoing and effective regulations, which shall be based on a full knowledge of all the facts, including a physical valuation of property. This physical valuation is not needed, or, at least, is very rarely needed, for fixing rates; but it is needed as the basis of honest capitalization.

We have come to recognize that franchises should never be granted except for a limited time, and never without proper provision for compensation to the public. It is my personal belief that the same kind and degree of control and supervision which should be exercised over public service corporations should be extended also to combinations which control necessaries of life, such as meat, oil, and coal, or which deal in them on an important scale. I have no doubt that the ordinary man who has control of them is much like ourselves. I have no doubt he would like to do well, but I want to have enough supervision to help him realize that desire to do well.

I believe that the officers, and, especially, the directors, of corporations should be held personally responsible when any corporation breaks the law.

Combinations in industry are the result of an imperative economic law which cannot be repealed by political legislation. The effort at prohibiting all combination has substantially failed. The way out lies, not in attempting to prevent such combinations, but in completely controlling them in the interest of public welfare. For that purpose the Federal Bureau of Corporations is an agency of first importance. Its powers, and, therefore, its efficiency, as well as that of the Interstate Commerce Commission, should be largely increased. We have a right to expect from the Bureau of Corporations and from the Interstate Commerce Commission a very high grade of public service. We should be as sure of the proper conduct of the interstate railways and the proper management of interstate business as we are now sure of the conduct and management of the national banks, and we should have as effective supervision in one case as in the other. The Hepburn Act, and the amendment to the Act in the shape in which it finally passed Congress at the last session, represent a long step in advance, and we must go yet further.

There is a widespread belief among our people that, under the

methods of making tariffs which have hitherto obtained, the special interests are too influential. Probably this is true of both the big special interests and the little special interests. These methods have put a premium on selfishness, and, naturally, the selfish big interests have gotten more than their smaller, though equally selfish, brothers. The duty of Congress is to provide a method by which the interest of the whole people shall be all that receives consideration. To this end there must be an expert tariff commission, wholly removed from the possibility of political pressure or of improper business influence. Such a commission can find the real difference between cost of production, which is mainly the difference of labor cost here and abroad. As fast as its recommendations are made, I believe in revising one schedule at a time. A general revision of the tariff almost inevitably leads to log-rolling and the subordination of the general public interest to local and special interests.

The absence of effective state, and, especially, national, restraint upon unfair money getting has tended to create a small class of enormously wealthy and economically powerful men, whose chief object is to hold and increase their power. The prime need is to change the conditions which enable these men to accumulate power which it is not for the general welfare that they should hold or exercise. We grudge no man a fortune which represents his own power and sagacity, when exercised with entire regard to the welfare of his fellows. Again, comrades over there take the lesson from your own experience. Not only did you not grudge, but you gloried in the promotion of the great generals who gained their promotion by leading the army to victory. So it is with us. We grudge no man a fortune in civil life if it is honorably obtained and well used. It is not even enough that it should have been gained without doing damage to the community. We should permit it to be gained only so long as the gaining represents benefit to the community. This, I know, implies a policy of a far more active governmental interference with social and economic conditions in this country than we have yet had, but I think we have got to face the fact that such an increase in governmental control is now necessary.

No man should receive a dollar unless that dollar has been fairly earned. Every dollar received should represent a dollar's worth of service rendered—not gambling in stocks, but service

rendered. The really big fortune, the swollen fortune, by the mere fact of its size acquires qualities which differentiate it in kind as well as in degree from what is possessed by men of relatively small means. Therefore, I believe in a graduated income tax on big fortunes, and in another tax which is far more easily collected and far more effective—a graduated inheritance tax on big fortunes, properly safeguarded against invasion and increasing rapidly in amount with the size of the estate.

The people of the United States suffer from periodical financial panics to a degree substantially unknown among the other nations which approach us in financial strength. There is no reason why we should suffer what they escape. It is of profound importance that our financial system should be promptly investigated, and so thoroughly and effectively revised as to make it certain that hereafter our currency will no longer fail at critical times to meet our needs.

It is hardly necessary for me to repeat that I believe in an efficient army and a navy large enough to secure for us abroad that respect which is the surest guarantee of peace. A word of special warning to my fellow citizens who are as progressive as I hope I am. I want them to keep up their interest in our internal affairs; and I want them also continually to remember Uncle Sam's interests abroad. Justice and fair dealing among nations rest upon principles identical with those which control justice and fair dealing among individuals of which nations are composed, with the vital exception that each nation must do its own part in international police work. If you get into trouble here, you can call for the police; but if Uncle Sam gets into trouble, he has got to be his own policeman, and I want to see him strong enough to encourage the peaceful aspirations of other peoples in connection with us. I believe in national friendships and heartiest good will to all nations; but national friendships, like those between men, must be founded on respect as well as on liking, on forbearance as well as upon trust. I should be heartily ashamed of any American who did not try to make the American government act as justly toward the other nations in international relations as he himself would act toward any individual in private relations. I should be heartily ashamed to see us wrong a weaker power, and I should hang my head forever if we tamely suffered wrong from a stronger power.

Of conservation I shall speak more at length elsewhere. Con-

servation means development as much as it does protection. I recognize the right and duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful use, the generations that come after us. I ask nothing of the nation except that it so behave as each farmer here behaves with reference to his own children. That farmer is a poor creature who skins the land and leaves it worthless to his children. The farmer is a good farmer who, having enabled the land to support himself and to provide for the education of his children, leaves it to them a little better than he found it himself. I believe the same thing of a nation.

Moreover, I believe that the natural resources must be used for the benefit of all our people, and not monopolized for the benefit of the few, and here again is another case in which I am accused of taking a revolutionary attitude. People forget how that one hundred years ago there were public men of good character who advocated the nation selling its public lands in great quantities, so that the nation could get the most money out of it, and giving it to the men who could cultivate it for their own uses. We took the proper democratic ground that the land should be granted in small sections to the men who were actually to till it and live on it. Now, with the water power, with the forests, with the mines, we are brought face to face with the fact that there are many people who will go with us in conserving the resources only if they are to be allowed to exploit them for their benefit. That is one of the fundamental reasons why the special interests should be driven out of politics. Of all the questions which can come before this nation short of the actual preservation of its existence in a great war, there is none which compares in importance with the great central task of leaving this land even a better land for our descendants than it is for us, and training them into a better race to inhabit the land and pass it on. Conservation is a great moral issue, for it involves the patriotic duty of insuring the safety and continuance of the nation. Let me add that the health and vitality of our people are at least as well worth conserving as their forests, waters, lands, and minerals, and in this great work the national government must bear a most important part.

I have spoken elsewhere also of the great task which lies before the farmers of the country to get for themselves and their wives and children not only the benefits of better farming, but also those

of better business methods and better conditions of life on the farm. The burden of this great task will fall, as it should, mainly upon the great organizations of the farmers themselves. I am glad it will, for I believe they are all well able to handle it. In particular, there are strong reasons why the Departments of Agriculture of the various states, the United States Department of Agriculture, and the agricultural colleges and experiment stations should extend their work to cover all phases of farm life, instead of limiting themselves, as they have far too often limited themselves in the past, solely to the question of the production of crops. And now a special word to the farmer. I want to see him make the farm as fine a farm as it can be made; and let him remember to see that the improvement goes on indoors as well as out; let him remember that the farmer's wife should have her share of thought and attention just as much as the farmer himself.

Nothing is more true than that excess of every kind is followed by reaction; a fact which should be pondered by reformer and reactionary alike. We are face to face with new conceptions of the relations of property to human welfare, chiefly because certain advocates of the rights of property as against the rights of men have been pushing their claims too far. The man who wrongly holds that every human right is secondary to his profit must now give way to the advocate of human welfare, who rightly maintains that every man hold his property subject to the general right of the community to regulate its use to whatever degree the public welfare may require it.

But I think we may go still further. The right to regulate the use of wealth in the public interest is universally admitted. Let us admit also the right to regulate the terms and conditions of labor, which is the chief element of wealth, directly in the interest of the common good. The fundamental thing to do for every man is to give him a chance to reach a place in which he will make the greatest possible contribution to the public welfare. Understand what I say there. Give him a chance, not push him up if he will not be pushed. Help any man who stumbles; if he lies down, it is a poor job to try to carry him; but if he is a worthy man, try your best to see that he gets a chance to show the worth that is in him. No man can be a good citizen unless he has a wage more than sufficient to cover the bare cost of living, and hours of labor short enough so that after his day's work is done he will have time and

energy to bear his share in the management of the community, to help in carrying the general load. We keep countless men from being good citizens by the conditions of life with which we surround them. We need comprehensive workmen's compensation acts, both state and national laws to regulate child labor and work for women, and, especially, we need in our common school not merely education in book learning, but also practical training for daily life and work. We need to enforce better sanitary conditions for our workers and to extend the use of safety appliances for our workers in industry and commerce, both within and between the states. Also, friends, in the interest of the workingman himself we need to set our faces like flint against mob violence just as against corporate greed; against violence and injustice and lawlessness by wage workers just as much as against lawless cunning and greed and selfish arrogance of employers. If I could ask but one thing of my fellow countrymen, my request would be that, whenever they go in for reform, they remember the two sides, and that they always exact justice from one side as much as from the other. I have small use for the public servant who can always see and denounce the corruption of the capitalist, but who cannot persuade himself, especially before election, to say a word about lawless mob violence. And I have equally small use for the man, be he a judge on the bench, or editor of a great paper, or wealthy and influential private citizen, who can see clearly enough and denounce the lawlessness of mob violence, but whose eyes are closed so that he is blind when the question is one of corruption in business on a gigantic scale. Also remember what I said about excess in reformer and reactionary alike. If the reactionary man, who thinks of nothing but the rights of property, could have his way, he would bring about a revolution; and one of my chief fears in connection with progress comes because I do not want to see our people, for lack of proper leadership, compelled to follow men whose intentions are excellent, but whose eyes are a little too wild to make it really safe to trust them. . . .

National efficiency has many factors. It is a necessary result of the principle of conservation widely applied. In the end it will determine our failure or success as a nation. National efficiency has to do, not only with natural resources and with men, but it is equally concerned with institutions. The state must be made efficient for the work which concerns only the people of the state;

and the nation for that which concerns all the people. There must remain no neutral ground to serve as a refuge for lawbreakers, and especially for lawbreakers of great wealth, who can hire the vulpine legal cunning which will teach them how to avoid both jurisdictions. It is a misfortune when the national legislature fails to do its duty in providing a national remedy, so that the only national activity is the purely negative activity of the judiciary in forbidding the state to exercise power in the premises.

I do not ask for overcentralization; but I do ask that we work in a spirit of broad and far-reaching nationalism when we work for what concerns our people as a whole. We are all Americans. Our common interests are as broad as the continent. I speak to you here in Kansas exactly as I would speak in New York or Georgia, for the most vital problems are those which effect us all alike. The national government belongs to the whole American people, and where the whole American people are interested, that interest can be guarded effectively only by the national government. The betterment which we see must be accomplished, I believe, mainly through the national government.

The American people are right in demanding that New Nationalism, without which we cannot hope to deal with new problems. The New Nationalism puts the national need before sectional or personal advantage. It is impatient of the utter confusion that results from local legislatures attempting to treat national issues as local issues. It is still more impatient of the impotence which springs from overdivision of governmental powers, the impotence which makes it possible for local selfishness or for legal cunning, hired by wealthy special interests, to bring national activities to a deadlock. This New Nationalism regards the executive power as the steward of the public welfare. It demands of the judiciary that it shall be interested primarily in human welfare rather than in property, just as it demands that the representative body shall represent all the people rather than any one class or section of the people.

I believe in shaping the ends of government to protect property as well as human welfare. Normally, and in the long run, the ends are the same; but whenever the alternative must be faced, I am for men and not for property, as you were in the Civil War. I am far from underestimating the importance of dividends; but I rank dividends below human character. Again, I do not have any

sympathy with the reformer who says he does not care for dividends. Of course, economic welfare is necessary, for a man must pull his own weight and be able to support his family. I know well that the reformers must not bring upon the people economic ruin, or the reforms themselves will go down in the ruin. But we must be ready to face temporary disaster, whether or not brought on by those who will war against us to the knife. Those who oppose all reforms will do well to remember that ruin in its worst form is inevitable if our national life brings us nothing better than swollen fortunes for the few and the triumph in both politics and business of a sordid and selfish materialism.

If our political institutions were perfect, they would absolutely prevent the political domination of money in any part of our affairs. We need to make our political representatives more quickly and sensitively responsive to the people whose servants they are. More direct action by the people in their own affairs under proper safeguards is vitally necessary. The direct primary is a step in this direction, if it is associated with a corrupt practice act effective to prevent the advantage of the man willing recklessly and unscrupulously to spend money over his more honest competitor. It is particularly important that all moneys received or expended for campaign purposes should be publicly accounted for, not only after election, but before election as well. Political action must be made simpler, easier, and freer from confusion for every citizen. I believe that the prompt removal of unfaithful or incompetent public servants should be made easy and sure in whatever way experience shall show to be most expedient in any class of cases.

One of the fundamental necessities in a representative government such as ours is to make certain that the men to whom the people delegate their power shall serve the people by whom they are elected, and not the special interests. I believe that every national officer, elected or appointed, should be forbidden to perform any service or receive any compensation, directly or indirectly, from interstate corporations; and a similar provision could not fail to be useful within the states. . . .

WOODROW WILSON

Wilson's many writings during his long period of service as professor of politics and president of Princeton University are notable for their literary quality and some of them are excellent works of a descriptive or analytical nature, but they have little value as commentaries upon the contemporary trends in American political development. Immediately upon his entrance into public life as Governor of New Jersey, however, he adopted the current "progressive" program. His writings in exposition and justification of that program come as near as any of the period to furnishing an adequate theoretical account of the developments which were then in progress.

INAUGURAL ADDRESS AS GOVERNOR OF NEW JERSEY[1]

1911

No wise man will say, of course, that he sees the whole problem of reform lying plain before him, or knows how to frame the entire body of law that will be necessary to square business with the general interest, and put right and fairness and public spirit in the saddle again in all the transactions of our new society; but some things are plain enough, and upon these we can act.

In the first place, it is plain that our laws with regard to the relations of employer and employe are in many respects wholly antiquated and impossible. They were framed for another age, which nobody now living remembers, which is, indeed, so remote from our life that it would be difficult for many of us to understand it if it were described to us. The employer is now generally a corporation or huge company of some kind; the employe is one of hundreds or of thousands brought together, not by individual masters whom they know and with whom they have personal relations, but by agents of one sort or another. Workingmen are marshalled in great numbers for the performance of a multitude of particular tasks under a common discipline. They generally use dangerous and powerful machinery, over whose repair and renewal they have no control. New rules must be devised with regard to their obligations and their rights, their obligations to their employers and their responsibilities to one another. New rules

[1] *The Public Papers of Woodrow Wilson*, edited by Ray Stannard Baker and William E. Dodd. New York: Harper and Brothers. 1925. *College and State*, vol. II, pp. 272–79.

must be devised for their protection, for their compensation when injured, for their support when disabled.

We call these questions of employers' liability, questions of workingmen's compensation, but those terms do not suggest quite the whole matter. There is something very new and very big and very complex about these new relations of capital and labour. A new economic society has sprung up, and we must effect a new set of adjustments. We must not pit power against weakness. The employer is generally in our day, as I have said, not an individual, but a powerful group of individuals, and yet the workingman is still, under our existing law, an individual when dealing with his employer, in case of accident, for example, or of loss or of illness, as well as in every contractual relationship. We must have a workingman's compensation act which will not put upon him the burden of fighting powerful composite employers to obtain his rights, but which will give him his rights without suit, directly, and without contest, by automatic operation of law, as if of a law of insurance.

This is the first adjustment needed, because it affects the rights, the happiness, the lives and fortunes of the largest number, and because it is the adjustment for which justice cries loudest and with the most direct appeal to our hearts as well as to our conscience.

But there is regulation needed which lies back of that and is much more fundamental. The composite employer himself needs to have his character and powers overhauled, his constitution and rights reconsidered, readjusted to the fundamental and abiding interests of society. If I may speak very plainly, we are much too free with grants of charters to corporations in New Jersey: A corporation exists, not of natural right, but only by license of law, and the law, if we look at the matter in good conscience, is responsible for what it creates. It can never rightly authorize any kind of fraud or imposition. It cannot righteously allow the setting up of a business which has no sound basis, or which follows methods which in any way outrage justice or fair dealing or the principles of honest industry. The law cannot give its license to things of that kind. It thereby authenticates what it ought of right to forbid.

I would urge, therefore, the imperative obligation of public policy and of public honesty we are under to effect such changes

in the law of the State as will henceforth effectually prevent the abuse of the privilege of incorporation which has in recent years brought so much discredit upon our State. In order to do this it will be necessary to regulate and restrict the issue of securities, to enforce regulations with regard to bona fide capital, examining very rigorously the basis of capitalization, and to prescribe methods by which the public shall be safeguarded against fraud, deception, extortion, and every abuse of its confidence. . . .

. . . . Our business is to adjust right to right, interest to interest, and to systematize right and convenience, individual rights and corporate privileges, upon the single basis of the general good, the good of whole communities, the good which no one will look after or suffice to secure if the legislator does not, the common good for whose safeguarding and maintenance government is intended.

This readjustment has not been going on very fast or very favorably in New Jersey. It has been observed that it limped, or was prevented, or neglected, in other States as well. Everywhere there has been confusion of counsel and many a sad miscarriage of plan. There have, consequently, been some very radical criticisms of our methods of political action. There is widespread dissatisfaction with what our legislatures do, and still more serious dissatisfaction with what they do not do. Some persons have said that representative government has proved too indirect and clumsy an instrument, and has broken down as a means of popular control. Others, looking a little deeper, have said that it was not representative government that had broken down, but the effort to get it. They have pointed out that with our present methods of machine nomination and our present methods of elections, which were nothing more than a choice between one set of machine nominees and another, we did not get representative government at all—at least not government representative of the people, but government representative of political managers who served their own interests and the interests of those with whom they found it profitable to establish partnerships.

Obviously this is something that goes to the root of the whole matter. Back of all reform lies the method of getting it. Back of the question what you want lies the question, the fundamental question of all government, how are you going to get it? How are you going to get public servants who will obtain it for you? How are you going to get genuine representatives who will serve your

real interests, and not their own or the interests of some special group or body of your fellow-citizens whose power is of the few and not of the many? These are the queries which have drawn the attention of the whole country to the subject of the direct primary, the direct choice of representatives by the people, without the intervention of the nominating machine, the nominating organization.

I earnestly commend to your careful consideration in this connection the laws in recent years adopted in the State of Oregon, whose effect has been to bring government back to the people and to protect it from the control of the representatives of selfish and special interests. They seem to me to point the direction which we must also take before we have completed our regeneration of a government which has suffered so seriously and so long as ours has here in New Jersey from private management and organized selfishness. Our primary laws, extended and perfected, will pave the way. They should be extended to every elective office, and to the selection of every party committee or official as well, in order that the people may once for all take charge of their own affairs, their own political organization and association; and the methods of primary selection should be so perfected that the primaries will be put upon the same free footing that the methods of election themselves are meant to rest upon.

We have here the undoubtedly sound chain and sequence of reforms: an actual direct choice by the people of the men who are to organize alike their parties and their government, and those measures which true representatives of the people will certainly favour and adopt—systematic compensation for injured workingmen; the careful regulation in the common interest of all corporations, both in respect of their organization and of their methods of business, and especially of public service corporations; the equalization of taxes; and the conservation of the natural resources of the State and of the health and safety of its people.

Another matter of the most vital consequence goes with all these: namely, systematic ballot reform and thorough and stringent provisions of law against corrupt practices in connection alike with primaries and with elections. We have lagged behind our sister States in these important matters, and should make haste to avail ourselves of their example and their experience. Here, again, Oregon may be our guide. . . .

FIRST INAUGURAL ADDRESS AS PRESIDENT OF THE UNITED STATES [1]

1913

. . . . We have made up our minds to square every process of our national life again with the standards we so proudly set up at the beginning and have always carried at our hearts. Our work is a work of restoration.

We have itemized with some degree of particularity the things that ought to be altered and here are some of the chief items: A tariff which cuts us off from our proper part in the commerce of the world, violates the just principles of taxation, and makes the Government a facile instrument in the hands of private interests; a banking and currency system based upon the necessity of the Government to sell its bonds fifty years ago and perfectly adapted to concentrating cash and restricting credits; an industrial system which, take it on all its sides, financial as well as administrative, holds capital in leading strings, restricts the liberties and limits the opportunities of labor, and exploits without renewing or conserving the natural resources of the country; a body of agricultural activities never yet given the efficiency of great business undertakings or served as it should be through the instrumentality of science taken directly to the farm, or afforded the facilities of credit best suited to its practical needs; watercourses undeveloped, waste places unreclaimed, forests untended, fast disappearing without plan or prospect of renewal, unregarded waste heaps at every mine. We have studied as perhaps no other nation has the most effective means of production, but we have not studied cost or economy as we should either as organizers of industry, as statesmen, or as individuals.

Nor have we studied and perfected the means by which government may be put at the service of humanity, in safeguarding the health of the Nation, the health of its men and its women and its children, as well as their rights in the struggle for existence. This is no sentimental duty. The firm basis of government is justice, not pity. These are matters of justice. There can be no equality or opportunity, the first essential of justice in the body politic, if men and women and children be not shielded in their lives, their

[1] *Public Papers of Woodrow Wilson; The New Democracy*, vol. II, pp. 3–4.

very vitality, from the consequences of great industrial and social processes which they can not alter, control, or singly cope with. Society must see to it that it does not itself crush or weaken or damage its own constituent parts. The first duty of law is to keep sound the society it serves. Sanitary laws, pure food laws, and laws determining conditions of labor which individuals are powerless to determine for themselves are intimate parts of the very business of justice and legal efficiency. . . .

FREEMEN NEED NO GUARDIANS [1]

1913

There are two theories of government that have been contending with each other ever since government began. One of them is the theory which in America is associated with the name of a very great man, Alexander Hamilton. A great man, but in my judgment, not a great American. He did not think in terms of American life. Hamilton believed that the only people who could understand government, and therefore the only people who were qualified to conduct it, were the men who had the biggest financial stake in the commercial and industrial enterprises of the country.

That theory, though few have now the hardihood to profess it openly, has been the working theory upon which our government has lately been conducted. It is astonishing how persistent it is. It is amazing how quickly the political party which had Lincoln for its first leader—Lincoln, who not only denied, but in his own person, so completely disproved, the aristocratic theory—it is amazing how quickly that party founded on faith in the people forgot the precepts of Lincoln and fell under the delusion that the "masses" needed the guardianship of "men of affairs."

For indeed, if you stop to think about it, nothing could be a further departure from original Americanism, from faith in the ability of a confident, resourceful, and independent people than the discouraging doctrine that somebody has got to provide prosperity for the rest of us. And yet that is exactly the doctrine on which the government of the United States has been conducted lately. Who have been consulted when important measures of government, like tariff acts, and currency acts, and railroad acts

[1] *Public Papers of Woodrow Wilson; The New Democracy*, vol. II, pp. 7–14.

were under consideration? The people whom the tariff chiefly affects, the people for whom the currency is supposed to exist, the people who pay the duties and ride on the railroads? Oh! no. What do they know about such matters! The gentlemen whose ideas have been sought are the big manufacturers, the bankers, and the heads of the great railroad combinations. The masters of the government of the United States are the combined capitalists and manufacturers of the United States. It is written over every intimate page of the records of Congress; it is written all through the history of conferences at the White House, that the suggestions of economic policy in this country have come from one source, not from many sources; the benevolent guardians, the kind-hearted trustees who have taken the troubles of government off our hands have become so conspicuous that almost anybody can write out a list of them. They have become so conspicuous that their names are mentioned upon almost every political platform. The men who have undertaken the interesting job of taking care of us do not force us to requite them with anonymously directed gratitude. We know them by name. . . .

The government of the United States at present is a foster-child of the special interests. It is not allowed to have a will of its own. It is told at every move, "Don't do that; you will interfere with our prosperity." And when we ask, "Where is our prosperity lodged?" a certain group of gentlemen say, "With us." The government of the United States in recent years has not been administered by the common people of the United States. You know just as well as I do—it is not an indictment against anybody, it is a mere statement of the facts—that the people have stood outside and looked on at their own government and that all they have had to determine in past years has been which crowd they would look on at; whether they would look on at this little group or that little group who had managed to get the control of affairs in its hands. Have you ever heard, for example, of any hearing before any great committee of the Congress in which the people of the country as a whole were represented, except it may be by the Congressmen themselves? The men who appear at those meetings in order to argue for this schedule in the tariff, for this measure or against that measure, are men who represent special interests. They may represent them very honestly; they may intend no wrong to their fellow citizens, but they are speaking from the

point of view always of a small portion of the population. I have sometimes wondered why men, particularly men of means, men who didn't have to work for their living shouldn't constitute themselves attorneys for the people, and every time a hearing is held before a committee of Congress should not go and ask, "Gentlemen, in considering these things suppose you consider the whole country? Suppose you consider the citizens of the United States?"

Now I don't want a smug lot of experts to sit down behind closed doors in Washington and play Providence to me. There is a Providence to which I am perfectly willing to submit. But as for other men setting up as Providence over myself, I seriously object. I have never met a political saviour in the flesh, and I never expect to meet one. . . .

I am one of those who absolutely reject the trustee theory, the guardianship theory. I have never found a man who knew how to take care of me, and, reasoning from that point out, I conjecture that there isn't any man who knows how to take care of the people of the United States. I suspect that the people of the United States understand their own interests better than any group of men in the confines of the country understand them. The men who are sweating blood to get their foothold in the world of endeavour understand the conditions of business in the United States very much better than the men who have arrived and are at the top. They know what the thing is that they are struggling against. They know how difficult it is to start a new enterprise. They know how far they have to search for credit that will put them upon an even footing with the men who have already built up industry in this country. They know that somewhere by somebody the development of industry in this country is being controlled.

I do not say this with the slightest desire to create any prejudice against wealth; on the contrary, I should be ashamed of myself if I excited class feeling of any kind. But I do mean to suggest this: that the wealth of the country has, in recent years, come from particular sources; it has come from those sources which have built up monopoly. Its point of view is a special point of view. It is the point of view of those men who do not wish that the people should determine their own affairs, because they do not believe that the people's judgment is sound. They want to be commis-

sioned to take care of the United States and of the people of the United States, because they believe that they, better than anybody else, understand the interests of the United States. I do not challenge their character; I challenge their point of view. We cannot afford to be governed as we have been governed in the last generation, by men who occupy so narrow, so prejudiced, so limited a point of view.

The government of our country cannot be lodged in any special class. The policy of a great nation cannot be tied up with any particular set of interests. I want to say, again and again, that my arguments do not touch the character of the men to whom I am opposed. I believe that the very wealthy men who have got their money by certain kinds of corporate enterprises have closed in their horizon, and that they do not see and do not understand the rank and file of the people. It is for that reason that I want to break up the little coterie that has determined what the government of the nation should do. . . .

We have got to relieve our government from the domination of special classes, not because these special classes are bad, necessarily, but because no special class can understand the interests of a great community.

I believe, as I believe in nothing else, in the average integrity and the average intelligence of the American people, and I do not believe that the intelligence of America can be put into commission anywhere. I do not believe that there is any group of men of any kind to whom we can afford to give that kind of trusteeship.

I will not live under trustees if I can help it. No group of men less than the majority has a right to tell me how I have got to live in America. I will submit to the majority, because I have been trained to do it—though I may sometimes have my private opinion even of the majority. I do not care how wise, how patriotic, the trustee may be, I have never heard of any group of men in whose hands I am willing to lodge the liberties of America in trust.

If any part of our people want to be wards, if they want to have guardians put over them, if they want to be taken care of, if they want to be children, patronised by the government, why, I am sorry, because it will sap the manhood of America. But I don't believe they do. I believe they want to stand on the firm foundation of law and right and take care of themselves. I, for my part,

don't want to belong to a nation, I believe that I do not belong to a nation, that needs to be taken care of by guardians. I want to belong to a nation, and I am proud that I do belong to a nation, that knows how to take care of itself. If I thought that the American people were reckless, were ignorant, were vindicative, I might shrink from putting the government into their hands. But the beauty of democracy is that when you are reckless you destroy your own established conditions of life; when you are vindictive, you wreak vengeance upon yourself; the whole stability of democratic polity rests upon the fact that every interest is every man's interest.

The theory that the men of biggest affairs, whose field of operation is the widest, are the proper men to advise the government is, I am willing to admit, rather a plausible theory. If my business covers the United States not only, but covers the world, it is to be presumed that I have a pretty wide scope in my vision of business. But the flaw is that it is my own business that I have a vision of, and not the business of the men who lie outside of the scope of the plans I have made for a profit out of the particular transactions I am connected with. And you can't, by putting together a large number of men who understand their own business, no matter how large it is, make up a body of men who will understand the business of the nation as contrasted with their own business interest.

In a former generation, half a century ago, there were a great many men associated with the government whose patriotism we are not privileged to deny nor to question, who intended to serve the people, but had become so saturated with the point of view of a governing class, that it was impossible for them to see America as the people of America themselves saw it. Then there arose that interesting figure, the immortal figure of the great Lincoln, who stood up declaring that the politicians, the men who had governed this country, did not see from the point of view of the people. When I think of that tall, gaunt figure rising in Illinois, I have a picture of a man free, unentangled, unassociated with the governing influences of the country, ready to see things with an open eye, to see them steadily, to see them whole, to see them as the men he rubbed shoulders with and associated with saw them. What the country needed in 1860 was a leader who understood and represented the thought of the whole people, as contrasted with that

of a special class which imagined itself the guardian of the country's welfare.

Now, likewise, the trouble with our present political condition is that we need some man who has not been associated with the governing classes and the governing influences of this country to stand up and speak for us; we need to hear a voice from the outside calling upon the American people to assert again their rights and prerogatives in the possession of their own government. . . .

ELIHU ROOT

Elihu Root, for many years a leader of the American bar, was Secretary of State under Roosevelt and later served as United States Senator from New York. His addresses and writings contain what is probably the most carefully reasoned theory of conservatism in politics developed by an American statesman during the past generation.

EXPERIMENTS IN GOVERNMENT [1]

1913

When proposals are made to change these institutions there are certain general considerations which should be observed.

The first consideration is that free government is impossible except through prescribed and established governmental institutions, which work out the ends of government through many separate human agents, each doing his part in obedience to law. Popular will cannot execute itself directly except through a mob. Popular will cannot get itself executed through an irresponsible executive, for that is simple autocracy. An executive limited only by the direct expression of popular will cannot be held to responsibility against his will, because, having possession of all the powers of government, he can prevent any true, free, and general expression adverse to himself, and unless he yields voluntarily he can be overturned only by a revolution. . . .

We should, therefore, reject every proposal which involves the

[1] *Experiments in Government and the Essentials of the Constitution.* The Stafford Little Lectures at Princeton University, April 15 and 16, 1913. Princeton University Press, 1913. Reprinted in *Addresses on Government and Citizenship;* Cambridge: Harvard University Press, 1916. Pp. 83–86. [Page references are to the latter.]

idea that the people can rule merely by voting, or merely by voting and having one man or group of men to execute their will.

A second consideration is that in estimating the value of any system of governmental institutions due regard must be had to the true functions of government and to the limitations imposed by nature upon what it is possible for government to accomplish. We all know of course that we cannot abolish all the evils in this world by statute or by the enforcement of statutes, nor can we prevent the inexorable law of nature which decrees that suffering shall follow vice, and all the evil passions and folly of mankind. Law cannot give to depravity the rewards of virtue, to indolence the rewards of industry, to indifference the rewards of ambition, or to ignorance the rewards of learning. The utmost that government can do is measurably to protect men, not against the wrong they do themselves but against wrong done by others, and to promote the long, slow process of educating mind and character to a better knowledge and nobler standards of life and conduct. We know all this, but when we see how much misery there is in the world and instinctively cry out against it, and when we see some things that government may do to mitigate it, we are apt to forget how little after all it is possible for any government to do, and to hold the particular government of the time and place to a standard of responsibility which no government can possibly meet. The chief motive power which has moved mankind along the course of development which we call the progress of civilization has been the sum total of intelligent selfishness in a vast number of individuals, each working for his own support, his own gain, his own betterment. It is that which has cleared the forests and cultivated the fields and built the ships and railroads, made the discoveries and inventions, covered the earth with commerce, softened by intercourse the enmities of nations and races, and made possible the wonders of literature and of art. Gradually, during the long process, selfishness has grown more intelligent, with a broader view of individual benefit from the common good, and gradually the influences of nobler standards of altruism, of justice, and human sympathy have impressed themselves upon the conception of right conduct among civilized men. But the complete control of such motives will be the millennium. Any attempt to enforce a millennial standard now by law must necessarily fail, and any judgment which assumes government's responsibility to enforce

such a standard must be an unjust judgment. Indeed, no such standard can ever be forced. It must come, not by superior force, but from the changed nature of man, from his willingness to be altogether just and merciful.

A third consideration is that it is not merely useless but injurious for government to attempt too much. It is manifest that to enable it to deal with the new conditions I have described we must invest government with authority to interfere with the individual conduct of the citizen to a degree hitherto unknown in this country. When government undertakes to give the individual citizen protection by regulating the conduct of others towards him in the field where formerly he protected himself by his freedom of contract, it is limiting the liberty of the citizen whose conduct is regulated and taking a step in the direction of paternal government. While the new conditions of industrial life make it plainly necessary that many such steps shall be taken, they should be taken only so far as they are necessary and are effective. Interference with individual liberty by government should be jealously watched and restrained, because the habit of undue interference destroys that independence of character without which in its citizens no free government can endure.

We should not forget that while institutions receive their form from national character they have a powerful reflex influence upon that character. Just so far as a nation allows its institutions to be moulded by its weaknesses of character rather than by its strength it creates an influence to increase weakness at the expense of strength.

The habit of undue interference by government in private affairs breeds the habit of undue reliance upon government in private affairs at the expense of individual initiative, energy, enterprise, courage, independent manhood.

The strength of self-government and the motive power of progress must be found in the characters of the individual citizens who make up a nation. Weaken individual character among a people by comfortable reliance upon paternal government and a nation soon becomes incapable of free self-government and fit only to be governed: the higher and nobler qualities of national life that make for ideals and effort and achievement become atrophied and the nation is decadent. . . .

DIRECT ELECTION OF SENATORS [1]

1911

Mr. President, there is another view of the fundamental proposition on which this resolution rests. It is an expression of distrust for representative government. It does not stand alone. It is a part of the great movement which has been going on now in these recent years throughout the country, and in which our people have been drifting away from their trust in representative government. These modern constitutions which are filled with specific provisions, limiting and directing the legislature in every direction, furnishing such startling contrasts to the simplicity of the Constitution of the United States, are an expression of distrust in representative government. The "initiative" is an expression of distrust in representative government. The "referendum" is an expression of distrust in representative government.

This resolution is an expression of the same sentiment. And strangely, sir, this movement comes at the very time when the development of our country in its business and social and political life makes it all the more necessary that we should depend upon representative government. We have gone far, far away from the days of the old New England town meeting. I doubt if some of the Senators coming from states of small population realize how far we have gone in the great industrial communities of the East and the Middle West from that condition in which direct democratic government is possible.

Mr. President, this whole series of expressions of distrust, the detailed limiting constitutions, the initiative, the referendum, the amendment of the Constitution which is now before us, are all an expression of that weakness of democracies which it is the function of the Constitution to guard democracies themselves against.

Mr. President, what is to become of the state legislatures if we follow the principles of this resolution? If you rob them of power, of dignity, of consequence, what will be the personnel of the state legislatures? We have had illustrations. The boards of aldermen in some of our American cities, originally bodies of high consideration filled by citizens of consequence and of high standing among

[1] Address in the Senate of the United States, February 10, 1911. Reprinted in *Addresses on Government and Citizenship*, pp. 269–72.

their fellows, have dwindled and sunk to insignificance and worthlessness, as power after power has been taken away from them. Once begin the progress in that direction by taking the first step based upon the principle of this resolution and you will find the members of our state legislatures growing less and less competent, less and less worthy of trust, and less and less efficient in the performance of their duties.

You can never develop competent and trusted bodies of public servants by expressing distrust of them, by taking power away from them, by holding them up to the world as being unworthy of confidence. Honest men, good men, self-respecting men, men whose standing in their community makes it desirable for the public service that they shall go into our state legislatures, will never subject themselves to be ranked in bodies suspected and discredited and deprived of power.

Mr. President, this resolution providing for an amendment is not an expression of confidence in the people; it is an expression of distrust in the people. It is not progress; it is a slipping back. It is not an improvement on our system of government; it is an abandonment of our system of government.

The true remedy for the evils that we see is not to abandon our duty, but to perform it. Sir, there is no weaker course for men to take than to endeavor to make up for the failure to do their duty by changing the form of the duty. This is a proposition that the people of the several states who have stayed away from the polls, who have been deaf to the considerations of public interest, who have allowed personal favoritism to supplant their desire to select the best public servants, who have been bought to cast their franchises, as the people of Adams County, Ohio, were bought, instead of curing themselves and performing their duty in the election of their state legislatures, shall try another way to select Senators of the United States. It is a proposition that the people who cannot elect honest men from their own neighbors can select honest men to the Senate of the United States.

Sir, what vote ever cast by an American citizen can be cast with a stronger probability that it is well informed than a vote for a member of his legislature? He is a neighbor; he is a man whom he has known all his life; he knows all about him. How can the men who are unable or unwilling to perform the duty of making a selection of an honest and faithful legislator from their own vicinage

improve upon their performance in the selection of a candidate in a state-wide election of candidates whom most of them know very little or nothing about, except what they get from the newspapers?

Sir, apart from that, it is never possible to cure neglect of duty by changing the form. There is but one safety for a popular government. No matter what constitutions you have or what statutes you enact, sooner or later you come to the polls; and if you do not have virtue and public spirit there, your government goes down. . . .

OLIVER WENDELL HOLMES

Mr. Justice Holmes was appointed to the United States Supreme Court by President Roosevelt in 1902. Since that time his opinions have attracted more attention than have those of any other American judge since the Civil War. Many of his most famous utterances are to be found in his dissenting opinions, and, inasmuch as those dissents have indicated an unusually tolerant attitude toward legislative experiments, he has frequently been supposed to be in favor of all manner of social, economic, and political reforms. However, as these extracts from his non-judicial writings indicate, his personal philosophy is profoundly different from the "radical" or "advanced" theories of the present time.

LAW AND THE COURT [1]

1913

Vanity is the most philosophical of those feelings that we are taught to despise. For vanity recognizes that if a man is in a minority of one we lock him up, and therefore longs for an assurance from others that one's work has not been in vain. If a man's ambition is the thirst for a power that comes not from office but from within, he never can be sure that any happiness is not a fool's paradise—he never can be sure that he sits on that other bench reserved for the masters of those who know. Then too, at least until one draws near to seventy, one is less likely to hear the trumpets than the rolling fire of the front. I have passed that age, but I still am on the firing line, and it is only in rare moments like

[1] *Collected Legal Papers.* New York: Harcourt, Brace and Company, 1921. Pp. 291–97.

this that there comes a pause and for half an hour one feels a trembling hope. They are the rewards of a lifetime's work.

But let me turn to more palpable realities—to that other visible Court to which for ten now accomplished years it has been my opportunity to belong. We are very quiet there, but it is the quiet of a storm centre, as we all know. Science has taught the world scepticism and has made it legitimate to put everything to the test of proof. Many beautiful and noble reverences are impaired, but in these days no one can complain if any institution, system, or belief is called on to justify its continuance in life. Of course we are not excepted and have not escaped. Doubts are expressed that go to our very being. Not only are we told that when Marshall pronounced an Act of Congress unconstitutional he usurped a power that the Constitution did not give, but we are told that we are the representatives of a class—a tool of the money power. I get letters, not always anonymous, intimating that we are corrupt. Well, gentlemen, I admit that it makes my heart ache. It is very painful, when one spends all the energies of one's soul in trying to do good work, with no thought but that of solving a problem according to the rules by which one is bound, to know that many see sinister motives and would be glad of evidence that one was consciously bad. But we must take such things philosophically and try to see what we can learn from hatred and distrust and whether behind them there may not be some germ of inarticulate truth.

The attacks upon the Court are merely an expression of the unrest that seems to wonder vaguely whether law and order pay. When the ignorant are taught to doubt they do not know what they safely may believe. And it seems to me that at this time we need education in the obvious more than investigation of the obscure. I do not see so much immediate use in committees on the high cost of living and inquiries how far it is due to the increases production of gold, how far to the narrowing of cattle ranges and the growth of population, how far to the bugaboo, as I do in bringing home to people a few social and economic truths. Most men think dramatically, not quantitatively, a fact that the rich would be wise to remember more than they do. We are apt to contrast the palace with the hovel, the dinner at Sherry's with the working man's pail, and never ask how much or realize how little is withdrawn to make the prizes a success (subordinate prizes—since the only prize much cared for by the powerful is power. The prize of

the general is not a bigger tent, but command). We are apt to think of ownership as a terminus, not as a gateway, and not to realise that except the tax levied for personal consumption large ownership means investment, and investment means the direction of labor toward the production of the greatest returns—returns that so far as they are great show by that very fact that they are consumed by the many, not alone by the few. If I may ride a hobby for an instant, I should say we need to think things instead of words—to drop ownership, money, etc., and to think of the stream of products; of wheat and cloth and railway travel. When we do, it is obvious that the many consume them; that they now as truly have substantially all there is, as if the title were in the United States; that the great body of property is socially administered now, and that the function of private ownership is to divine in advance the equilibrium of social desires—which socialism equally would have to divine, but which, under the illusion of self-seeking, is more poignantly and shrewdly foreseen.

I should like to see it brought home to the public that the question of fair prices is due to the fact that none of us can have as much as we want of all the things we want; that as less will be produced than the public wants, the question is how much of each product it will have and how much go without; that thus the final competition is between the objects of desire, and therefore between producers of those objects; that when we oppose labor and capital, labor means the group that is selling its product and capital all the other groups that are buying it. The hated capitalist is simply the mediator, the prophet, the adjuster according to his divination of the future desire. If you could get that believed, the body of the people would have no doubt as to the worth of law.

That is my outside thought on the present discontents. As to the truth embodied in them, in part it cannot be helped. It cannot be helped, it is as it should be, that the law is behind the times. I told a labor leader once that what they asked was favor, and if a decision was against them they called it wicked. The same might be said of their opponents. It means that the law is growing. As law embodies beliefs that have triumped in the battle of ideas and then have translated themselves into action, while there still is doubt, while opposite convictions still keep a battle front against each other, the time for law has not come; the notion destined to prevail is not yet entitled to the field. It is a misfortune if a judge

reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong. I think that we have suffered from this misfortune, in State courts at least, and that this is another and very important truth to be extracted from the popular discontent. When twenty years ago a vague terror went over the earth and the word socialism began to be heard, I thought and still think that fear was translated into doctrines that had no proper place in the Constitution or the common law. Judges are apt to be naif, simple-minded men, and they need something of Mephistopheles. We too need education in the obvious—to learn to transcend our own convictions and to leave room for much that we hold dear to be done away with short of revolution by the orderly change of law.

I have no belief in panaceas and almost none in sudden ruin. I believe with Montesquieu that if the chance of a battle—I may add, the passage of a law—has ruined a state, there was a general cause at work that made the state ready to perish by a single battle or a law. Hence I am not much interested one way or the other in the nostrums now so strenuously urged. I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States. For one in my place sees how often a local policy prevails with those who are not trained to national views and how often action is taken that embodies what the Commerce Clause was meant to end. But I am not aware that there is any serious desire to limit the Court's power in this regard. For most of the things that properly can be called evils in the present state of the law I think the main remedy, as for the evils of public opinion, is for us to grow more civilized.

If I am right it will be a slow business for our people to reach rational views, assuming that we are allowed to work peaceably to that end. But as I grow older I grow calm. If I feel what are perhaps an old man's apprehensions, that competition from new races will cut deeper than working men's disputes and will test whether we can hang together and can fight; if I fear that we are running through the world's resources at a pace that we cannot keep; I do not lose my hopes. I do not pin my dreams for the future to my country or even to my race. I think it probable that

civilization somehow will last as long as I care to look ahead—perhaps with smaller numbers, but perhaps also bred to greatness and splendor by science. I think it not improbable that man, like the grub that prepares a chamber for the winged thing it never has seen but is to be—that man may have cosmic destinies that he does not understand. And so beyond the vision of battling races and an impoverished earth I catch a dreaming glimpse of peace.

The other day my dream was pictured to my mind. It was evening. I was walking homeward on Pennsylvania Avenue near the Treasury, and as I looked beyond Sherman's statue to the west the sky was aflame with scarlet and crimson from the setting sun. But, like the note of downfall in Wagner's opera, below the sky line there came from little globes the pallid discord of the electric lights. And I thought to myself the Götterdämmerung will end, and from those globes clustered like evil eggs will come the new masters of the sky. It is like the time in which we live. But then I remembered the faith that I partly have expressed, faith in a universe not measured by our fears, a universe that has thought and more than thought inside of it, and as I gazed, after the sunset and above the electric lights there shone the stars.

IDEALS AND DOUBTS[1]

1915

For the last thirty years we have been preoccupied with the embryology of legal ideas; and explanations, which, when I was in college, meant a reference to final causes, later came to mean tracing origin and growth. But fashion is as potent in the intellectual world as elsewhere, and there are signs of an inevitable reaction. The reaction, if there is one, seems to me an advance, for it is toward the ultimate question of worth. . . . To show that it has my sympathy I may refer to the *Law Quarterly Review*.[2] But perhaps it will not be out of place to express the caution with which I am compelled to approach any general recension from which the young hope so much.

The first inquiry is for the criterion. If I may do Del Vecchio

[1] *Collected Legal Papers*. Pp. 303–07.
[2] October, 1909.

the wrong of summing up in a sentence or two what from a hasty reading I gather to be his mode of reaching one, it is that of a Neo-Kantian idealist. Experience takes place and is organized in consciousness, by its machinery and according to its laws, such as the category of cause and effect. Therefore consciousness constructs the universe and as the fundamental fact is entitled to fundamental reverence. From this it is easy to proceed to the Kantian injunction to regard every human being as an end in himself and not as a means.

I confess that I rebel at once. If we want conscripts, we march them up to the front with bayonets in their rear to die for a cause in which perhaps they do not believe. The enemy we treat not even as a means but as an obstacle to be abolished, if so it may be. I feel no pangs of conscience over either step, and naturally am slow to accept a theory that seems to be contradicted by practices that I approve. In fact, it seems to me that the idealists give away their case when they write books. For it shows that they have done the great act of faith and decided that they are not God. If the world were my dream, I should be God in the only universe I know. But although I cannot prove that I am awake, I believe that my neighbors exist in the same sense that I do, and if I admit that, it is easy to admit also that I am in the universe, not it in me.

When I say that a thing is true, I mean that I cannot help believing it. I am stating an experience as to which there is no choice. But as there are many things that I cannot help doing that the universe can, I do not venture to assume that my inabilities in the way of thought are inabilities of the universe. I therefore define the truth as the system of my limitations, and leave absolute truth for those who are better equipped. With absolute truth I leave absolute ideals of conduct equally on one side.

But although one believes in what commonly, with some equivocation, is called necessity; that phenomena always are found to stand in quantitatively fixed relations to earlier phenomena; it does not follow that without such absolute ideals we have nothing to do but to sit still and let time run over us. As I wrote many years ago, the mode in which the inevitable comes to pass is through effort. Consciously or unconsciously we all strive to make the kind of a world that we like. And although with Spinoza we may regard criticism of the past as futile, there is every reason for doing all that we can to make a future such as we desire.

There is every reason also for trying to make our desires intelligent. The trouble is that our ideals for the most part are inarticulate, and that even if we have made them definite we have very little experimental knowledge of the way to bring them about. The social reformers of today seem to me so far to forget that we no more can get something for nothing by legislation than we can by mechanics as to be satisfied if the bill to be paid for their improvements is not presented in a lump sum. Interstitial detriments that may far outweigh the benefit promised are not bothered about. Probably I am too skeptical as to our ability to do more than shift disagreeable burdens from the shoulders of the stronger to those of the weaker. But I hold to a few articles of a creed that I do not expect to see popular in my day. I believe that the wholesale social regeneration which so many now seem to expect, if it can be helped by conscious, coördinated human effort, cannot be affected appreciably by tinkering with the institution of property, but only by taking in hand life and trying to build a race. That would be my starting point for an ideal for the law. The notion that with socialized property we should have women free and a piano for everybody seems to me an empty humbug.

To get a little nearer to the practical, our current ethics and our current satisfaction with conventional legal rules, it seems to me, can be purged to a certain extent without reference to what our final ideal may be. To rest upon a formula is a slumber that, prolonged, means death. Our system of morality is a body of imperfect social generalizations expressed in terms of emotion. To get at its truth, it is useful to omit the emotion and ask ourselves what those generalizations are and how far they are confirmed by fact accurately ascertained. So in regard to the formulas of the law, I have found it very instructive to consider what may be the postulates implied. They are generically two: that such and such a condition or result is desirable and that such and such means are appropriate to bring it about. In all debatable matters there are conflicting desires to be accomplished by inconsistent means, and the further question arises, which is entitled to prevail in the specific case? Upon such issues logic does not carry us far, and the practical solution sometimes may assume a somewhat cynical shape. But I have found it a help to clear thinking to try to get behind my conventional assumptions as a judge whose first business is to see that the game is played according to the rules whether

I like them or not. To have doubted one's own first principles is the mark of a civilized man. To know what you want and why you think that such a measure will help it is the first but by no means the last step towards intelligent legal reform. The other and more difficult one is to realize what you must give up to get it, and to consider whether you are ready to pay the price.

It is fashionable nowadays to emphasize the criterion of social welfare as against the individualistic eighteenth century bills of rights. I may venture to refer to a book of mine published thirty-four years ago to show that it is no novelty.[3] The trouble with some of those who hold to that modest platitude is that they are apt to take the general premise as a sufficient justification for specific measures. One may accept the premise in good faith and yet disbelieve all the popular conceptions of socialism, or even doubt whether there is a panacea in giving women votes. Personally I like to know what the bill is going to be before I order a luxury. But it is a pleasure to see more faith and enthusiasm in the young men; and I thought that one of them made a good answer to some of my skeptical talk when he said, "You would base legislation upon regrets rather than upon hopes."

JOHN SPARGO

THE SOCIALIST STATE [1]

1906

Since about 1804 there have been a number of communistic experiments in America. Some of these, particularly the experiment of Robert Owen at New Harmony and of the New England Transcendentalists at Brook Farm, attracted a considerable amount of interest, but the experiments were ordinarily of short duration and of temporary significance. Furthermore, they were not made the basis for the discussion of political theories. Of more recent years Marxian socialism, in varying forms, has been frequently discussed but it has been the economic and social, rather than the political aspects of the socialist movement which have received most attention. The considerable body of

[3] *The Common Law*, pp. 43, 44, 48.

[1] *Socialism.* New York: The Macmillan Company, 1906.

literature in England and on the Continent which deals at length with the state under a socialist system has no real counterpart here. The selection given below seems to be a fair statement of the political ideas of most American Socialists. It is reprinted here as a typical view rather than as the contemporary opinion of its author, for, after being active in the Socialist movement for many years, Mr. Spargo has recently issued a complete recantation.

[211] It would be absurd, and contrary to Socialist principles, to attempt to give detailed specifications of the Socialist state. There are, however, certain fundamental principles which are essential to its existence. Without them, Socialist society is impossible. If we can take these principles and correlate them, we shall obtain a suggestive outline of the Socialist state. So far we may safely proceed with full scientific sanction; beyond are the realms of fancy and dreams, the Elysian fields of Utopia.

Society consists of an aggregation of individuals, but it is something more than that; it is an organism, though as yet an imperfectly developed one. While the units of which it is composed have distinct and independent lives within certain limits, they are, outside of those limits, interdependent and interrelated. Man is governed by two great forces. On the one hand, he is essentially an egoist, ever striving to individual freedom; on the other hand, he is a social animal, ever seeking association and avoiding isolation. This duality expresses itself in the composition of society. There is a struggle between its members motived by the desire for individual expansion; and, alongside of it, a sense of solidarity, a movement to mutual, reciprocal relations, motived by the gregarian instinct. All social life is necessarily an oscillation between these two motives. The social problem in its last analysis is nothing more than the problem of combining and harmonizing social and individual interests and actions springing therefrom.

In dealing with the social problem, the problem of how to secure harmony of social and individual interests and actions, it is necessary first of all to recognize that both the motives named are equally important and necessary agents of human progress. The idea largely prevails that Socialists ignore the individual motive and consider only the social motive, just as the ultra-individualists have erred in an opposite discrimination. The Socialist state has been conceived as a great bureaucracy. Mr. Amstey gave humorous and vivid expression to this idea in *Punch* some years ago, when he represented the citizens of the Socialist state as being all

clothed alike, known only by numbers, living in barracks, strangers to all the joys of family life, plodding through their allotted tasks under a race of hated bureaucrats, and having the solace of chewing gum in their leisure time as a specially paternal provision. Some such mental picture must have inspired Herbert Spencer's *Coming Slavery*, and it must be confessed that the early forms of Socialist propaganda by pictures of imaginary coöperative commonwealths afforded some excuse for the idea. Most intelligent Socialists, if called upon to choose between them, would probably prefer to live in Thibet under a personal despotism, rather than under the rule of the hierarchies of some of these imaginary commonwealths which Utopian Socialists have depicted.

The Socialistic ideal may be said to be a form of social organization in which every individual will enjoy the greatest possible amount of freedom for self-development and expression; and in which social authority will be reduced to the minimum necessary for the preservation and insurance of that right to all individuals. There is an incontestable right of the individual to full and free self-development and expression. It is not, however, an *absolute* right, but is subject to such restrictions as may be necessary to safeguard the like right of another individual, or of society as a whole. *Absolute* personal liberty is not possible: to grant it to one individual would be equivalent to denying it to others. If, in a certain community, a need is commonly felt for a system of drainage to save the citizens from the perils of a possible outbreak of typhoid or some other epidemic disease, and all the citizens agree upon a scheme except two or three, who, in the name of personal liberty, declare that their property must not be touched, what is to be done? If the citizens, out of solicitude for the personal liberty of the objecting individuals, abandon or modify their plans, is it not clear that the liberty of the many has been sacrificed to the liberty of the few, which is the essence of tyranny? Absolute individual liberty is incompatible with social liberty. The liberty of each must, in Mill's phrase, be bounded by the like liberty of all. Absolute personal liberty is a chimera, a delusion.

The dual forces which serve as the motives of individual and collective action, spring, unquestionably, from the fact that individuals are at once alike and unlike, equal and unequal. Alike in our needs of certain fundamental necessities, such as food, clothing, shelter, coöperation for producing these necessities, for

protection from foes, human and other, we are unlike in tastes, temperament, character, will, and so on, till our diversity becomes as great and as general as our likeness. Now, the problem is to insure equal opportunities of full development to all these diversely constituted and endowed individuals, and, at the same time, to maintain the principle of equal obligations to society on the part of every individual. This is the problem of social justice: to insure to each the same social opportunities, to secure from each a recognition of the same obligations toward all. The basic principle of the Socialist state must be justice; no privileges or favors can be extended to any individuals or groups of individuals.

Politically, the organization of the Socialist state must be democratic. Socialism without democracy is as impossible as a shadow without light. The word "Socialism" is a monstrous misnomer when applied to schemes of paternalism or government ownership which lack the essential, vital principle of democracy. Justice requires that the legislative power of society rest upon universal suffrage and the political equality of all men and women, except lunatics and criminals. It is manifestly unjust to exact obedience to the laws from those who have had no share in making them and can have no share in altering them. The only exceptions to this principle are (1) minors, children not yet arrived at the age of responsibility agreed upon by the citizens; (2) lunatics and certain classes of criminals; (3) aliens, non-citizens temporarily resident in the state.

Democracy in the sense of popular self-government, the "government of the people, by the people, and for the people," of which political rhetoricians boast, is only approximately attainable. While all can equally participate in the legislative power, all cannot participate directly in the administrative power, and it becomes necessary, therefore, to adopt the principle of delegated authority, representative government. Direct legislation by the people might be realized through the adoption of the principles of popular initiative and referendum, proportional representation, and the right to recall. Indeed, there is no apparent reason why *all* legislation, except temporary legislation as in war time, famine, plague, and such abnormal conditions, should not be directly initiated and enacted, leaving only the just and proper enforcement of the law to delegated authority. In all the programmes of Socialist parties throughout the world, the principles of popular

initiative and referendum, proportional representation, and the right of recalling representatives are included at the present time; not merely as means to secure a greater degree of real democracy within the existing social system, but also, and primarily, to prepare the required political framework of democracy for the industrial commonwealth of the future.

The great political problem for such a society consists in choosing wisely the trustees of this important social function and authority, and seeing that they rightly use it for the common good, without abuse, either for the profit of themselves or their friends, and without prejudice to any portion of society. There is no such thing as an "automatic democracy," and eternal vigilance will be the price of liberty under socialism as it has ever been. There can be no other safeguard against the usurpation of power than the popular will and conscience ever alert upon the watch-towers.

With these general principles prevised, we may consider, briefly, what are the respective rights of the individual and of society. The rights of the individual may be summarized as follows: There must be perfect freedom of movement, including the right to withdraw from the domain of the government, to migrate at will to other territories; immunity from arrest, except from infringing others' rights, with compensation for improper arrest; respect of the privacy of domicile and correspondence; full liberty of dress, subject to decency; freedom of utterance whether by speech or publication, subject only to the protection of others from insult, injury, or interference with their equal liberties. Absolute freedom of the individual in all that pertains to art, science, philosophy, and religion, and their teaching, or propaganda, is essential. The state can rightly have nothing to do with these matters; they belong to the personal life alone. Art, science, philosophy, and religion cannot be protected by any authority, nor is such protection needed.

In this summary only certainties, imperative, essential conditions, have been included. Doubtless many Socialists would considerably extend the list of things to be totally exempt from collective authority and control. Some, for instance, would include the right of the individual to possess and bear arms for the defense of person and property. On the other hand, it might be objected with good show of reason by other Socialists that such a right must always be liable to abuses imperiling the peace of so-

ciety, and that the same ends would be served more surely if individual armament were made impossible. Other Socialists would include in the category of private acts outside the sphere of law the union of the sexes. They would do away with legal intervention in marriage and make it exclusively a private concern. On the other hand, again many Socialists, probably an overwhelming majority, would object. They would insist that the state must, in the interest of the children and for its own self-preservation, assume certain responsibilities for, and exercise a certain control over, all marriages. While believing that under Socialism marriage would no longer be subject to economic motives—matrimonial markets for titles and fortunes no longer existing—and that the maximum of personal freedom together with the minimum of social authority would be possible in the union of the sexes, they would still insist upon the necessity of that minimum of legal control. While, therefore, our hasty summary by no means exhausts the category of personal liberties, it is sufficiently comprehensive to show that individual freedom would by no means be crushed out of existence by the Socialist state. The intolerable bureaucracy of collectivism is wholly an imaginary evil.

In the same general manner, we may summarize the principal functions of the state as follows: the state has the right and power to organize and control the economic system, comprehending in that term the production and distribution of all social wealth wherever private enterprise is dangerous to the social well-being, or is inefficient; the defense of the community from invasion, from fire, flood, famine, or disease; the relations with other states, such as trade agreements, boundary treaties, and the like; the maintenance of order, including the juridical and police systems in all their branches; the public education in all its departments. It will be found that these five groups of functions include all the services which the state may properly undertake, and that not one of them can be safely intrusted to private enterprise. On the other hand, it is not necessary to assume that the state must have an *absolute* monopoly of any one of these groups of functions to be performed in the social organism. It would not be necessary, for example, for the state to prohibit its citizens from entering into voluntary relations with the citizens of other countries for the promotion of friendly international relations, for trade reciprocity, and so on. Likewise the juridical functions being in the hands of the state

would not prevent voluntary arbitration. Our study becomes, therefore, a study of social physiology.

The principle already postulated, that the state must undertake the production and distribution of social wealth wherever private enterprise is dangerous, or less efficient than public enterprise, clarifies somewhat the problem of the industrial organization of the Socialist régime, which is a vastly more difficult problem than that of its political organization. Socialism by no means involves the suppression of all private property and industry; only when these fail in efficiency or result in injustice and inequality of benefits does socialism present itself. There are many petty, subordinate industries, especially the making of articles of luxury, which might be allowed to remain in private hands, subject only to such general regulations as might be found necessary for the protection of health and the public order. On the other hand, there are things, natural monopolies, which cannot be justly or efficiently used by private enterprise. Land ownership and all that depends thereon, such as mining, transportation, and the like, must of necessity be collective and universal.

In the Socialist state, then, certain forms of private industry will be tolerated, and perhaps even definitely encouraged, but the great fundamental economic activities will be socialized. The Socialist state will not be static and, consequently, what at first may be regarded as being properly the subject of private enterprise may develop to an extent or in directions which necessitate its transformation to the category of essentially social properties. Hence, when the Socialist state is here spoken of, it is not by any means intended to describe the full limits of socialization, the fully developed collectivist commonwealth, but rather the opposite limits, the minimum of socialization; the conditions essential to that stage of social evolution at which it will be possible to speak of capitalism as a past and outgrown stage, and of the present as the new era of Socialism.

Socialists, naturally, differ upon this point very materially. To the present writer, however, it would seem sufficiently comprehensive to say that the economic structure of the new society must include at least the following: (1) Ownership of all natural resources, such as land, mines, forests, oil wells, and so on; (2) operation of all means of transportation and communication other than those of purely personal service; (3) operation of all industrial

production involving large capital and associated labor, except where carried on by voluntary, democratic coöperation; (4) organization of all labor essential to the public service, such as the building of schools, hospitals, docks, roads, bridges, sewers, and the like; the construction of all the machinery and plant requisite to the social production and distribution, and of things necessary for the maintenance of those engaged in such public services as the national defense and all who are wards of the state; (5) a monopoly of the monetary and credit functions, including coinage, banking, mortgaging, and the extension of credit to private enterprise. With these economic activities undertaken by the state, a pure democracy differing vitally from all the class-dominated states of history, private enterprise would by no means be excluded, but limited to an extent making the exploitation of public interests and needs for private gain impossible. Socialism thus becomes the defender of individual liberty, not its enemy.

As owner of the earth and all the major instruments of production and exchange, society would occupy a position enabling it to see that the physical and mental benefits derived from its wealth, its natural resources, its collective experience, genius, and labor, were universalized as befits a democracy. It would be able to guarantee the right to live by labor to all its citizens through preventing the monopolization of the land and instruments and social opportunities in general. It would be in a position to make every development from competition to monopoly the occasion for further socialization. Thus there would be no danger to the state in permitting, or even fostering, private industry within the limits suggested. As the organizer of the vast body of labor essential to the operation of the main productive and distributive functions of society, and to the other public services, the state would be able to set the standard of living, alike with regard to income and leisure, which private industry would be compelled, by competitive force, to observe. The regulation of production, too, would be possible, and as a result the crisis arising from glutted markets would disappear. Finally, in the control of all the functions of credit, the state would effectually prevent the exploitation of the mass of the people through financial agencies, which is perhaps the greatest evil of our present social system. . . .

[225] . . . . We must face the fact that, in anything worthy of the name of an industrial democracy, the terms and conditions of

employment cannot be decided wholly without regard to the will of the workers themselves on the one hand, nor, on the other hand, by the workers alone without reference to the general body of the citizenry. If the former method fails to satisfy the requirements of democracy by ignoring the will of the workers in the organization of industry, the alternative method involves a hierarchial government, equally incompatible with democracy. Some way must be found by which the industrial government of society, the organization of production and distribution, may be securely based upon the dual basis of common civic rights and the rights of the workers in their special relations as such.

In actual practice to-day, in those industries in which the organization of the workers into unions has been most successful, the workers, through their organizations, do exercise a certain amount of control over the conditions of their employment. They make trade agreements, for instance, in which such matters as wages, hours of labor, apprenticeship, output, engagement and discharge of workers, and numerous other matters of a like nature, are made subject to the joint control of the employers and the workers. Of course, this share in the control of the industry in which they are employed is a right enjoyed only as the fruit of conquest, won by war and maintained only by ceaseless vigilance and armed strength. It is not inconceivable, however, that in the Socialist state there might be a frank extension of this principle. The workers in the main groups of industries might form autonomous organizations for the administration of their special interest, subject only to certain fundamental laws of society and its government. Thus, the trades unions would become administrative politico-economic organizations, after the manner of the mediaeval guilds, instead of mere agencies of class warfare as at present.

The economic organization of the Socialist state would consist, then, of three distinct forms, as follows: (1) Private production and exchange, subject only to such general supervision and control by the state as the interests of society demand, such as protection against monopolization, sanitary laws, and the like; (2) voluntary coöperation, subject to similar supervision and control; (3) production and exchange by the state, the administration to be by the autonomous organizations of the workers in industrial groups, subject to the fundamental laws and government of society as a whole.

Two other functions of the economic organization of society remain to be considered, the distribution of labor and its remuneration. In the organization of industry society will have to achieve a twofold result, a maximum of general, social efficiency, on the one hand, and of personal liberty and comfort to the workers on the other. The state would not only guarantee the right of labor, but, as a corollary, it would impose the duty of labor upon every competent person. The Pauline injunction, "If any man will not work, neither shall he eat," would be applied in the Socialist state to all except the incompetent to labor. The immature child, the aged, the sick and the infirm members of society, would alone be exempted from labor. The result of this would be that instead of a large unemployed army vainly seeking the right to work, on the one hand, accompanied by excessive overwork of the great mass of the workers fortunate enough to be employed, a vast increase in the number of producers from this one cause alone would make possible much greater leisure for the whole body of workers. Benjamin Franklin estimated that in his day four hours' labor from every adult male able to work would be more than sufficient to provide wealth enough for all human wants; and it is certain that, without resorting to any standard of Spartan simplicity, or denying luxury and beauty to any individual, Franklin's estimate could be easily realized with anything approaching a scientific organization of labor.

Not only would the productive forces be enormously increased by the absorption of those workers who under the present system are unemployed, and those who do not labor or seek labor; in addition to these, there would be a tremendous transference of potential productive energy from occupations rendered obsolete and unnecessary by the socialization of society. Thus, there are today tens of thousands of lawyers, bankers, traders, middlemen, speculators, and others, whose functions, necessary to the capitalist system, would, in most cases, cease to have any value. They would be compelled because of this to enter the producing class. The possibilities of the scientific organization of industry are almost unlimited. Every gain made by the state in the direction of economy of production would test the private enterprise existing and urge it on in the same direction. Likewise, every gain made by the private producers would test the social production and urge it onward. Whether socialized production extended its sphere,

or remained confined to its minimum limitations, would depend upon the comparative success or failure resulting. The state would not be able to arbitrarily extend its functions. The decision would rest with people, who would, naturally, resort to social effort wherever it demonstrated its ability to perform any function more efficiently than private enterprise, with greater advantages of comfort and liberty to the community and to the individual.

While in the Socialist régime labor would be compulsory, it is inconceivable that a free people would tolerate a bureaucratic rule assigning to each individual his or her proper task, no matter how ingenious the system of assignment might be. Just as it is necessary to insist that all must be secured in their right to labor, and required to labor, it is necessary also that the choice of one's occupation should be as far as possible personal and free, subject only to the laws of supply and demand. The greatest amount of personal freedom compatible with the requisite efficiency would be secured to the workers in their chosen occupations through their craft organizations. . . .

[237] The administration of justice is necessarily a social function in a democratic society. All juridical functions should be socialized in the strict sense of being maintained at the social expense for the free service of the citizens. Court fees, advocates' charges, and other like expenses incidental to the administration of justice in present society, are all anti-democratic and subversive of justice.

Finally, education is likewise a social necessity which society itself must assume responsibility for. We have discovered that for self-protection society must insist upon a certain minimum of education for every child able to receive it; that it is too vital a matter to be left to the option of parents or the desires of the immature child. We have made a certain minimum of education compulsory and free; the Socialist state would make a minimum—probably larger than our present minimum—compulsory, but it would also make *all* education free. From the first stages, in the kindergartens, to the last, in the universities, education must be wholly free. So long as a single bar exists to prevent any child from receiving all the education it is capable of profiting by, democracy is unattained.

Whether the Socialist régime could tolerate the existence of elementary schools other than its own, such as privately con-

ducted kindergartens and schools, religious schools, and so on, is questionable. Probably not. It would probably not content itself with refusing to permit religious doctrines or ideas to be taught in its schools, but would go further, and, as the natural protector of the child, guard its independence of thought in later life as far as possible by forbidding religious teaching of any kind in schools for children up to a certain age. Beyond that age, religious education, in all other than the public schools, would be freely permitted. This restriction of religious education to the years of judgment and discretion implies no hostility to religion on the part of the state, but neutrality. Not the least important of the rights of the child is the right to be protected from influences which bias the mind and destroy the possibilities of independent judgment in later life, or make it attainable only as a result of bitter, needless, tragic experience.

In this brief suggested outline of the Socialist state, the aim has been to show that the Socialist ideal is far from being the network of laws commonly imagined, or the mechanical arrangement of human relations devised by Utopian romancers. If the Socialist propaganda of to-day largely consists of the advocacy of laws, it must be remembered that these are to *ameliorate conditions in the existing social system.* The Socialist ideal of the state of the future is not a life completely enmeshed in a network of government, but a life controlled by government as little as possible—a maximum of personal freedom with a minimum of restraint. . . .

WALTER LIPPMANN

PUBLIC OPINION[1]

1922

During the past fifteen years Mr. Walter Lippmann, who was formerly on the staff of the *New Republic* and is now the chief editorial writer of the New York *World*, has written nine books on American government and politics. All of them contain suggestive discussions of contemporary political ideas. Nearly all of them have indicated an attitude highly critical of the democratic theory which has generally been taken for granted in this country during

[1] *Public Opinion.* New York: Harcourt, Brace and Company, 1922.

the past three or four generations. So far it can hardly be said that his political philosophy has reached its final form; certainly his constructive proposals as found in this book and in its successor, *The Phantom Public*, do not more than begin to solve the problems which he raises. But in breaking away from the older traditions and in challenging accepted dogma he has at least brought certain basic problems of political theory into the focus of discussion.

[253] Since Public Opinion is supposed to be the prime mover in democracies, one might reasonably expect to find a vast literature. One does not find it. There are excellent books on government and parties, that is, on the machinery which in theory registers public opinions after they are formed. But on the source from which these public opinions arise, on the processes by which they are derived, there is relatively little. The existence of a force called Public Opinion is in the main taken for granted, and American political writers have been most interested either in finding out how to make governments express the common will, or in how to prevent the common will from subverting the purposes for which they believe the government exists. According to their traditions they have wished either to tame opinion or to obey it. Thus the editor of a notable series of text-books writes that "the most difficult and the most momentous question of government (is) how to transmit the force of individual opinion into public action."

But surely there is a still more momentous question, the question of how to validate our private versions of the political scene. There is, as I shall try to indicate further on, the prospect of radical improvement by the development of principles already in operation. But this development will depend on how well we learn to use knowledge of the way opinions are put together to watch over our own opinions when they are being put together. For casual opinion, being the product of partial contact, of tradition, and personal interests, cannot in the nature of things, take kindly to a method of political thought which is based on exact record, measurement, analysis and comparison. Just those qualities of the mind which determine what shall seem interesting, important, familiar, personal, and dramatic, are the qualities which in the first instance realistic opinion frustrates. Therefore, unless there is in the community at large a growing conviction that prejudice and intuition are not enough, the working out of realistic opinion, which takes time, money, labor, conscious effort, patience, and equanimity, will not find enough support. That conviction grows

as self-criticism increases, and makes us conscious of buncombe, contemptuous of ourselves when we employ it, and on guard to detect it. Without an ingrained habit of analyzing opinion when we read, talk, and decide, most of us would hardly suspect the need of better ideas, nor be interested in them when they appear, nor be able to prevent the new technic of political intelligence from being manipulated.

Yet democracies, if we are to judge by the oldest and most powerful of them have made a mystery out of public opinion. There have been skilled organizers of opinion who understood the mystery well enough to create majorities on election day. But these organizers have been regarded by political science as low fellows or as "problems," not as possessors of the most effective knowledge there was on how to create and operate public opinion. The tendency of the people who have voiced the ideas of democracy, even when they have not managed its action, the tendency of students, orators, editors, has been to look upon Public Opinion as men in other societies look upon the uncanny forces to which they ascribe the last word in the direction of events.

For in almost every political theory there is an inscrutable element which in the heyday of that theory goes unexamined. Behind the appearances there is a Fate, there are Guardian Spirits, or Mandates to a Chosen People, a Divine Monarchy, a Vice-Regent of Heaven, or a Class of the Better Born. The more obvious angels, demons, and kings are gone out of democratic thinking, but the need for believing that there are reserve powers of guidance persists. It persisted for those thinkers of the Eighteenth Century who designed the matrix of democracy. They had a pale god, but warm hearts, and in the doctrine of popular sovereignty they found the answer to their need of an infallible origin for the new social order. There was the mystery, and only enemies of the people touched it with profane and curious hands.

They did not remove the veil because they were practical politicians in a bitter and uncertain struggle. They had themselves felt the aspiration of democracy, which is ever so much deeper, more intimate and more important than any theory of government. They were engaged, as against the prejudice of ages, in the assertion of human dignity. What possessed them was not whether John Smith had sound views on any public question, but that John Smith, scion of a stock that had always been considered in-

ferior, would now bend his knee to no other man. It was this spectacle that made it bliss "in that dawn to be alive." But every analyst seems to degrade that dignity, to deny that all men are reasonable all the time, or educated, or informed, to note that people are fooled, that they do not always know their own interests, and that all men are not equally fitted to govern.

The critics were about as welcome as a small boy with a drum. Every one of these observations on the fallibility of man was being exploited ad nauseam. Had democrats admitted there was truth in any of the aristocratic arguments they would have opened a breach in the defenses. And so just as Aristotle had to insist that the slave was a slave by nature, the democrats had to insist that the free man was a legislator and administrator by nature. They could not stop to explain that a human soul might not yet have, or indeed might never have, this technical equipment, and that nevertheless it had an inalienable right not to be used as the unwilling instrument of other men. The superior people were still too strong and too unscrupulous to have refrained from capitalizing so candid a statement.

So the early democrats insisted that a reasoned righteousness welled up spontaneously out of the mass of men. All of them hoped that it would, many of them believed that it did, although the cleverest, like Thomas Jefferson, had all sorts of private reservations. But one thing was certain: if public opinion did not come forth spontaneously, nobody in that age believed it would come forth at all. For in one fundamental respect the political science on which democracy was based was the same science that Aristotle formulated. It was the same science for democrat and aristocrat, royalist and republican, in that its major premise assumed the art of government to be a natural endowment. Men differed radically when they tried to name the men so endowed; but they agreed in thinking that the greatest question of all was to find those in whom political wisdom was innate. Royalists were sure that kings were born to govern. Alexander Hamilton thought that while "there are strong minds in every walk of life . . . the representative body, with too few exceptions to have any influence on the spirit of the government, will be composed of landholders, merchants, and men of the learned professions." Jefferson thought the political faculties were deposited by God in farmers and planters, and sometimes spoke as if they were found in all the

people. The main premise was the same: to govern was an instinct that appeared, according to your social preferences, in one man or a chosen few, in all males, or only in males who were white and twenty-one, perhaps even in all men and all women.

In deciding who was most fit to govern, knowledge of the world was taken for granted. The aristocrat believed that those who dealt with large affairs possessed the instinct, the democrats asserted that all men possessed the instinct and could therefore deal with large affairs. It was no part of political science in either case to think out how knowledge of the world could be brought to the ruler. If you were for the people you did not try to work out the question of how to keep the voter informed. By the age of twenty-one he had his political faculties. What counted was a good heart, a reasoning mind, a balanced judgment. These would ripen with age, but it was not necessary to consider how to inform the heart and feed the reason. Men took in their facts as they took in their breath.

But the facts men could come to possess in this effortless way were limited. They could know the customs and more obvious character of the place where they lived and worked. But the outer world they had to conceive, and they did not conceive it instinctively, nor absorb trustworthy knowledge of it just by living. Therefore, the only environment in which spontaneous politics were possible was one confined within the range of the ruler's direct and certain knowledge. There is no escaping this conclusion, wherever you found government on the natural range of men's faculties. "If," as Aristotle said, "the citizens of a state are to judge and distribute offices according to merit, then they must know each other's characters; where they do not possess this knowledge, both the election to offices and the decision of law suits will go wrong."

Obviously this maxim was binding upon every school of political thought. But it presented peculiar difficulties to the democrats. Those who believed in class government could fairly claim that in the court of the king, or in the country houses of the gentry, men did know each other's characters, and as long as the rest of mankind was passive, the only characters one needed to know were the characters of men in the ruling class. But the democrats, who wanted to raise the dignity of all men, were immediately involved by the immense size and confusion of their ruling class—the male

electorate. Their science told them that politics was an instinct, and that the instinct worked in a limited environment. Their hopes bade them insist that all men in a very large environment could govern. In this deadly conflict between their ideals and their science, the only way out was to assume without much discussion that the voice of the people was the voice of God.

The paradox was too great, the stakes too big, their ideal too precious for critical examination. They could not show how a citizen of Boston was to stay in Boston and conceive the views of a Virginian, how a Virginian in Virginia could have real opinions about the government at Washington, how Congressmen in Washington could have opinions about China or Mexico. For in that day it was not possible for many men to have an unseen environment brought into the field of their judgment. There had been some advances, to be sure, since Aristotle. There were a few newspapers, and there were books, better roads perhaps, and better ships. But there was no great advance, and the political assumptions of the Eighteenth Century had essentially to be those that had prevailed in political science for two thousand years. The pioneer democrats did not possess the material for resolving the conflict between the known range of man's attention and their illimitable faith in his dignity.

Their assumptions antedated not only the modern newspaper, the world-wide press service, photography and moving pictures, but, what is really more significant, they antedated measurement and record, quantitative and comparative analysis, the canons of evidence, and the ability of psychological analysis to correct and discount the prejudices of the witness. I do not mean to say that our records are satisfactory, our analysis unbiased, our measurements sound. I do mean to say that the key inventions have been made for bringing the unseen world into the field of judgment. They had not been made in the time of Aristotle, and they were not yet important enough to be visible for political theory in the age of Rousseau, Montesquieu, or Thomas Jefferson. In a later chapter I think we shall see that even in the latest theory of human reconstruction, that of the English Guild Socialists, all the deeper premises have been taken over from this older system of political thought.

That system, whenever it was competent and honest, had to assume that no man could have more than a very partial experi-

ence of public affairs. In the sense that he can give only a little time to them that assumption is still true, and of the utmost consequence. But ancient theory was compelled to assume, not only that men could give little attention to public questions, but that the attention available would have to be confined to matters close at hand. It would have been visionary to suppose that a time would come when distant and complicated events could conceivably be reported, analyzed, and presented in such a form that a really valuable choice could be made by an amateur. That time is now in sight. There is no longer any doubt that the continuous reporting of an unseen environment is feasible. It is often done badly, but the fact that it is done at all shows that it can be done, and the fact that we begin to know how badly it is often done, shows that it can be done better. With varying degrees of skill and honesty distant complexities are reported every day by engineers and accountants for business men, by secretaries and civil servants for officials, by intelligence officers for the General Staff, by some journalists for some readers. These are crude beginnings but radical, far more radical in the literal meaning of that word than the repetition of wars, revolutions, abdications and restorations; as radical as the change in the scale of human life which has made it possible for Mr. Lloyd George to discuss Welsh coal mining after breakfast in London, and the fate of the Arabs before dinner in Paris.

For the possibility of bringing any aspect of human affairs within the range of judgment breaks the spell which has lain upon political ideas. There have, of course, been plenty of men who did not realize that the range of attention was the main premise of political science. They have built on sand. They have demonstrated in their own persons the effects of a very limited and self-centered knowledge of the world. But for the political thinkers who have counted from Plato and Aristotle through Machiavelli and Hobbes to the democratic theorists, speculation has revolved around the self-centered man who had to see the whole world by means of a few pictures in his head.

[312] The democratic fallacy has been its preoccupation with the origin of government rather than with the processes and results. The democrat has always assumed that if political power could be derived in the right way, it would be beneficent. His whole attention has been on the source of power, since he is hyp-

notized by the belief that the great thing is to express the will of the people, first because expression is the highest interest of man, and second because the will is instinctively good. But no amount of regulation at the source of a river will completely control its behavior, and while democrats have been absorbed in trying to find a good mechanism for originating social power, that is to say a good mechanism of voting and representation, they neglected almost every other interest of men. For no matter how power originates, the crucial interest is in how power is exercised. What determines the quality of civilization is the use made of power. And that use cannot be controlled at the source.

If you try to control government wholly at the source, you inevitably make all the vital decisions invisible. For since there is no instinct which automatically makes political decisions that produce a good life, the men who actually exercise power not only fail to express the will of the people, because on most questions no will exists, but they exercise power according to opinions which are hidden from the electorate.

If, then, you root out of the democratic philosophy the whole assumption in all its ramifications that government is instinctive, and that therefore it can be managed by self-centered opinions, what becomes of the democratic faith in the dignity of man? It takes a fresh lease of life by associating itself with the whole personality instead of with a meager aspect of it. For the traditional democrat risked the dignity of man on one very precarious assumption, that he would exhibit that dignity instinctively in wise laws and good government. Voters did not do that, and so the democrat was forever being made to look a little silly by tough-minded men. But if, instead of hanging human dignity on the one assumption about self-government, you insist that man's dignity requires a standard of living, in which his capacities are properly exercised, the whole problem changes. The criteria which you then apply to government are whether it is producing a certain minimum of health, of decent housing, of material necessities, of education, of freedom, of pleasures, of beauty, not simply whether at the sacrifice of all these things, it vibrates to the self-centered opinions that happen to be floating around in men's minds. In the degree to which these criteria can be made exact and objective, political decision, which is inevitably the concern of comparatively few people, is actually brought into relation with the interests of men.

There is no prospect, in any time which we can conceive, that the whole invisible environment will be so clear to all men that they will spontaneously arrive at sound public opinions on the whole business of government. And even if there were a prospect, it is extremely doubtful whether many of us would wish to be bothered or would take the time to form an opinion on "any and every form of social action" which affects us. The only prospect which is not visionary is that each of us in his own sphere will act more and more on a realistic picture of the invisible world, and that we shall develop more and more men who are expert in keeping these pictures realistic. Outside the rather narrow range of our own possible attention, social control depends upon devising standards of living and methods of audit by which the acts of public officials and industrial directors are measured. We cannot ourselves inspire or guide all these acts, as the mystical democrat has always imagined. But we can steadily increase our real control over these acts by insisting that all of them shall be plainly recorded and their results objectively measured. I should say, perhaps, that we can progressively hope to insist. For the working out of such standards and of such audits has only begun.

[398] In real life no one acts on the theory that he can have a public opinion on every public question, though this fact is often concealed where a person thinks there is no public question because he has no public opinion. But in the theory of our politics we continue to think more literally than Lord Bryce intended that "the action of Opinion is continuous," even though "its action . . . deals with broad principles only." And then because we try to think of ourselves having continuous opinions, without being altogether certain what a broad principle is, we quite naturally greet with an anguished yawn an argument that seems to involve the reading of more government reports, more statistics, more curves and more graphs. For all these are in the first instance just as confusing as partisan rhetoric, and much less entertaining.

The amount of attention available is far too small for any scheme in which it was assumed that all the citizens of the nation would, after devoting themselves to the publications of all the intelligence bureaus, become alert, informed, and eager on the multitude of real questions that never do fit very well into any broad principle. I am not making that assumption. Primarily, the

intelligence bureau is an instrument of the man of action, of the representative charged with decision, of the worker at his work, and if it does not help them, it will help nobody in the end. But in so far as it helps them to understand the environment in which they are working, it makes what they do visible. And by that much they become more responsible to the general public.

The purpose, then, is not to burden every citizen with expert opinions on all questions, but to push that burden away from him towards the responsible administrator. An intelligence system has value, of course, as a source of general information, and as a check on the daily press. But that is secondary. Its real use is as an aid to representative government and administration both in politics and industry. The demand for the assistance of expert reporters in the shape of accountants, statisticians, secretariats, and the like, comes not from the public, but from men doing public business, who can no longer do it by rule of thumb. It is in origin and in ideal an instrument for doing public business better, rather than an instrument for knowing better how badly public business is done.

As a private citizen, as a sovereign voter, no one could attempt to digest these documents. But as one party to a dispute, as a committeeman in a legislature, as an officer in government, business, or a trade union, as a member of an industrial council, reports on the specific matter at issue will be increasingly welcome. The private citizen interested in some cause would belong, as he does now, to voluntary societies which employed a staff to study the documents, and make reports that served as a check on officialdom. There would be some study of this material by newspaper men, and a good deal by experts and by political scientists. But the outsider, and every one of us is an outsider to all but a few aspects of modern life, has neither time, nor attention, nor interest, nor the equipment for specific judgment. It is on the men inside, working under conditions that are sound, that the daily administrations of society must rest.

The general public outside can arrive at judgments about whether these conditions are sound only on the result after the event, and on the procedure before the event. The broad principles on which the action of public opinion can be continuous are essentially principles of procedure. The outsider can ask experts to tell him whether the relevant facts were duly considered; he can-

not in most cases decide for himself what is relevant or what is due consideration. The outsider can perhaps judge whether the groups interested in the decision were properly heard, whether the ballot, if there was one, was honestly taken, and perhaps whether the result was honestly accepted. He can watch the procedure when the news indicates that there is some thing to watch. He can raise a question as to whether the procedure itself is right, if its normal results conflict with his ideal of a good life. But if he tries in every case to substitute himself for the procedure, to bring in Public Opinion like a providential uncle in the crisis of a play, he will confound his own confusion. He will not follow any train of thought consecutively.

For the practice of appealing to the public on all sorts of intricate matters means almost always a desire to escape criticism from those who know by enlisting a large majority which has had no chance to know. The verdict is made to depend on who had the loudest or the most entrancing voice, the most skilful or the most brazen publicity man, the best access to the most space in the newspapers. For even when the editor is scrupulously fair to "the other side," fairness is not enough. There may be several other sides, unmentioned by any of the organized, financed and active partisans.

The private citizen, beset by partisan appeals for the loan of his Public Opinion, will soon see, perhaps, that these appeals are not a compliment to his intelligence, but an imposition on his good nature and an insult to his sense of evidence. As his civic education takes account of the complexity of his environment, he will concern himself about the equity and the sanctity of procedure, and even this he will in most cases expect his elected representative to watch for him. He will refuse himself to accept the burden of these decisions, and will turn down his thumbs in most cases on those who, in their hurry to win, rush from the conference table with the first dope for the reporters.

Only by insisting that problems shall not come up to him until they have passed through a procedure, can the busy citizen of a modern state hope to deal with them in a form that is intelligible. For issues, as they are stated by a partisan, almost always consist of an intricate series of facts, as he has observed them surrounded by a large fatty mass of stereotyped phrases charged with his emotion. According to the fashion of the day, he will emerge from

the conference room insisting that what he wants is some soul-filling idea like Justice, Welfare, Americanism, Socialism. On such issues the citizen outside can sometimes be provoked to fear or admiration, but to judgment never. Before he can do anything with the argument, the fat has to be boiled out of it for him. . . .

IRVING BABBITT

DEMOCRACY AND STANDARDS [1]

1924

This selection is from the last chapter of a book which represents the culmination of an argument which Professor Babbitt of Harvard University has developed in a series of studies—*Literature and the American College*, *The Masters of Modern French Criticism*, *The New Laokoon*, and *Rousseau and Romanticism*. They represent a carefully reasoned defence of critical humanism as opposed to sentimental or utilitarian humanitarianism. He argues that the philosophies of life and of politics which followed in the trail of Rousseauian naturalism and which are now generally accepted are fundamentally wrong. The leaders of recent times have emphasized the welfare and progress of "mankind in the lump" rather than the inner life of the individual. This book is, as he expresses it, "devoted to the most unpopular of all tasks—a defence of the veto power." A satisfactory introduction to Professor Babbitt's philosophy of politics is to be found in the article by P. S. Richards in the *Nineteenth Century and After* (April, May, 1928) and in L. A. Mercier's *Mouvement humaniste aux États-Unis* (Paris: Hachette, 1928).

[239] Judged by any quantitative test, the American achievement is impressive. We have ninety per cent of the motors of the world and control seventy-five per cent of its oil; we produce sixty per cent of the world's steel, seventy per cent of its copper, and eighty per cent of its telephones and typewriters. This and similar statistical proof of our material preëminence, which would have made a Greek apprehensive of Nemesis, seems to inspire in many Americans an almost lyrical complacency. . . .

[240] If quantitatively the American achievement is impressive, qualitatively it is somewhat less satisfying. What must one think

[1] *Democracy and Leadership.* Boston: Houghton, Mifflin Company, 1924.

of a country, asks one of our foreign critics, whose most popular orator is W. J. Bryan, whose favorite actor is Charlie Chaplin, whose most widely read novelist is Harold Bell Wright, whose best known evangelist is Billy Sunday, and whose representative journalist is William Randolph Hearst? What one must evidently think of such a country, even after allowing liberally for overstatement, is that it lacks standards. Furthermore, America suffers not only from a lack of standards, but also not infrequently from a confusion or an inversion of standards. As an example of the inversion of standards we may take the bricklayer who, being able to lay two thousand bricks a day, is reduced by union rules to laying five hundred. There is confusion of standards, again, when we are so impressed by Mr. Henry Ford's abilities as organizer and master mechanic that we listen seriously to his views on money; or when, simply because Mr. Edison has shown inventive genius along certain lines, we receive him as an authority on education. One is reminded of the story of the French butcher who, having need of legal aid, finally, after looking over a number of lawyers, selected the fattest one.

The problem of standards, though not identical with the problem of democracy, touches it at many points and is not therefore the problem of any one country. . . .

[243] One is inclined, indeed, to ask, in certain moods, whether the net result of the movement that has been sweeping the Occident for several generations may not be a huge mass of standardized mediocrity; and whether in this country in particular we are not in danger of producing in the name of democracy one of the most trifling brands of the human species that the world has yet seen. To be sure, it may be urged that, though we may suffer loss of distinction as a result of the democratic drift, by way of compensation a great many average people will, in the Jeffersonian sense at least, be made "happy." If we are to judge by history, however, what supervenes upon the decline of standards and the disappearance of leaders who embody them is not some equalitarian paradise, but inferior types of leadership. . . .

[245] We are assured, indeed, that the highly heterogeneous elements that enter into our population will, like various instruments in an orchestra, merely result in a richer harmony; they will, one may reply, provided that, like an orchestra, they be properly led. Otherwise the outcome may be an unexampled

cacophony. This question of leadership is not primarily biological, but moral. Leaders may vary in quality from the man who is so loyal to sound standards that he inspires right conduct in others by the sheer rightness of his example, to the man who stands for nothing higher than the law of cunning and the law of force, and so is, in the sense I have sought to define, imperialistic. If democracy means simply the attempt to eliminate the qualitative and selective principle in favor of some general will, based in turn on a theory of natural rights, it may prove to be only a form of the vertigo of the abyss. As I have tried to show in dealing with the influence of Rousseau on the French Revolution, it will result practically, not in equality, but in a sort of inverted aristocracy. One's choice may be, not between a democracy that is properly led and a democracy that hopes to find the equivalent of standards and leadership in the appeal to a numerical majority, that indulges in other words in a sort of quantitative impressionism, but between a democracy that is properly lead and a decadent imperialism. One should, therefore, in the interests of democracy itself seek to substitute the doctrine of the right man for the doctrine of the rights of man. . . .

[247] . . . . There is an opposition of first principles between those who maintain that the popular will should prevail, but only after it has been purified of what is merely impulsive and ephemeral, and those who maintain that this should prevail immediately and unrestrictedly. The American experiment in democracy has, therefore, from the outset been ambiguous, and will remain so until the irrepressible conflict between a Washingtonian and a Jeffersonian liberty has been fought to a conclusion. . . .

[250] . . . . The Eighteenth Amendment is striking proof of our loss of grasp, not only on the principles that underlie our own Constitution, but that must underlie any constitution, as such, in opposition to mere legislative enactment.

Our present drift away from constitutional freedom can be understood only with reference to the progressive crumbling of traditional standards and the rise of a naturalistic philosophy that, in its treatment of specifically human problems, has been either sentimental or utilitarian. The significant changes in our own national temper in particular are finally due to the fact that Protestant Christianity, especially in the Puritanic form, has been giving way to humanitarianism. The point is worth making be-

cause the persons who have favored prohibition and other similar "reforms" have been attacked as Puritans. Genuine Puritanism was, however, a religion of the inner life. Our unionist leaders, Washington, Marshall, and Lincoln, though not narrowly orthodox, were still religious in the traditional sense. The struggle between good and evil, as they saw it, was still primarily not in society, but in the individual. Their conscious dependence on a higher or divine will could not fail to be reflected in their notion of liberty. Jefferson, on the contrary, associated his liberty, not with God, but with "nature." He admired, as is well known, the liberty of the American Indian. He was for diminishing to the utmost the rôle of government, but not for increasing the inner control that must, according to Burke, be in strict ratio to the relaxation of outer control. When evil actually appears, the Jeffersonian cannot appeal to the principle of inner control; he is not willing again to admit that the sole alternative to this type of control is force; and so he is led into what seems at first sight a paradoxical denial of his own principles: he has recourse to legislation. . . .

[253] . . . . It has been estimated that for one *Verboten* sign in Germany we already have a dozen in this country; only, having set up our *Verboten* sign, we get even by not observing it. Thus prohibition is pronounced by the Government, largely repudiated by the individual conscience, and enforced (very imperfectly) by the police. The multitude of laws we are passing is one of many proofs that we are growing increasingly lawless. . . .

[256] Standardization is, however, a less serious menace to standards than what are currently known as "ideals." The person who breaks down standards in the name of ideals does not seem to be impelled by base commercial motives, but to be animated, on the contrary, by the purest commiseration for the lowly and the oppressed. We must have the courage to submit this humanitarian zeal to a close scrutiny. We may perhaps best start with the familiar dictum that America is only another name for opportunity. Opportunity to do what? To engage in a scramble for money and material success, until the multimillionaire emerges as the characteristic product of a country dedicated to the proposition that all men are created equal? According to Napoleon, the French Revolution was also only another name for opportunity (*la carriére ouverte aux talents*). Some of our commercial supermen have

evidently been making use of their opportunity in a very Napoleonic fashion. In any case, opportunity has meaning only with reference to some true standard. The sentimentalist, instead of setting up some such standard by way of protest against the wrong type of superiority, inclines rather to bestow an unselective sympathy on those who have been left behind in the race for economic advantage. Even when less materialistic in his outlook, he is prone to dodge the question of justice. He does not ask whether a man is an underdog because he has already had his opportunity and failed to use it, whether, in short, the man that he takes to be a victim of the social order is not rather a victim of his own misconduct or at least of his own indolence and inattention. He thus exposes himself to the penalties visited on those who set out to be kinder than the moral law.

At bottom the point of view of the "uplifter" is so popular because it nourishes spiritual complacency; it enables a man to look on himself as "up" and on some one else as "down." But there is psychological if not theological truth in the assertion of Jonathan Edwards that complacent people are a "particular smoke" in God's nostrils. A man needs to look, not down, but up to standards set so much above his ordinary self as to make him feel that he is himself spiritually the underdog. The man who thus looks up is becoming worthy to be looked up to in turn, and, to this extent, qualifying for leadership. Leadership of this type, one may add, may prove to be, in the long run, the only effectual counterpoise to that of the imperialistic superman.

No amount of devotion to society and its supposed interests can take the place of this inner obeisance of the spirit to standards. The humanitarian would seem to be caught here in a vicious circle. If he turns from the inner life to serve his fellow men, he becomes a busybody. If he sets out again to become exemplary primarily with a view to the benefit of others, he becomes a prig. Nothing will avail short of humility. Humility as Burke saw, is the ultimate root of the justice that should prevail in the secular order, as well as of the virtues that are specifically religious. The modern problem, I have been insisting, is to secure leaders with an allegiance to standards, now that the traditional order with which Burke associated his standards and leadership has been so seriously shaken. Those who have broken with the traditional beliefs have thus far shown themselves singularly ineffective in dealing with this prob-

lem of leadership, even when they have admitted the need of leaders at all. . . .

[259] One cannot grant that an aristocracy of scientific intellectuals or indeed any aristocracy of intellect is what we need. This would mean practically to encourage the *libido sciendi* and so to put pride in the place of humility. Still less acceptable would be an aristocracy of artists; as the word art has come to be understood in recent times, this would mean an aristocracy of aesthetes who would attempt to base their selection on the *libido sentiendi*. The Nietzchean attempt, again, to found the aristocratic and selective principle on the sheer expansion of the will to power (*libido dominandi*) would lead in practice to horrible violence and finally to death of civilization. . . .

[262] The democratic idealist is prone to make light of the whole question of standards and leadership because of his unbounded faith in the plain people. How far is this appeal to the plain people justified and how far is it merely demagogic? There is undoubted truth in the saying that there is somebody who knows more than anybody, and that is everybody. Only one must allow everybody sufficient time to sift the evidence and add that, even so, everybody does not know very much. Burke told the electors of Bristol that he was not flattering their opinions of the moment, but uttering the views that both they and he must have five years thence. Even in this triumph of the sober judgment of the people over its passing impression, the rôle of the true leader should not be underestimated. Thus in the year 1795 the plain people of America were eager to give the fraternal accolade to the French Jacobins. The great and wise Washington opposed an alliance that would almost certainly have been disastrous, and as a result he had heaped upon him by journals like the "Aurora," the forerunner of our modern "journals of opinion," epithets that, as he himself complained, would not have been deserved by a common pickpocket. In a comparatively short time Washington and his group were seen to be right, and those who seemed to be the spokesmen of the plain people were seen to be wrong. It is not clear that one can have much faith even in the sober second thought of a community that has no enlightened minority. A Haytian statesman, for example, might not gain much in appealing from Haytian opinion of to-day to Haytian opinion of five years hence. The democratic idealist does not, however, mean as a rule by an appeal to the plain

people an appeal to its sober second thought. He means rather the immediate putting into effect of the will of a numerical majority. Like the man in the comic song the people is supposed to "want what it wants when it wants it." Our American drift for a number of years has unquestionably been towards a democracy of this radical type, as is evident from the increasing vogue of the initiative, referendum, and recall (whether of judges or judicial decisions) as well as from popular primaries and the direct election of Senators. The feeling that the people should act directly on all measures has led to the appearance in certain States of ballots thirty feet long! Yet the notion that wisdom resides in a popular majority at any particular moment should be the most completely exploded of all fallacies. If the plain people at Jerusalem had registered their will with the aid of the most improved type of ballot box, there is no evidence that they would have preferred Christ to Barabbas. In view of the size of the jury that condemned Socrates; one may affirm confidently that he was the victim of a "great and solemn referendum." On the other hand, the plain people can be shown to have taken a special delight in Nero. But the plain people, it will be replied, has been educated and enlightened. The intelligence tests applied in connection with the selective draft indicates that the average mental age of our male voters is about fourteen. The intelligence testers are, to be sure, under some suspicion as to the quality of their own intelligence. A more convincing proof of the low mentality of our population is found perhaps, in the fact that the Hearst publications have twenty-five million readers.

"There is nothing," says Goethe, "more odious than the majority; for it consists of a few powerful leaders, a certain number of accommodating scoundrels and subservient weaklings, and a mass of men who trudge after them without in the least knowing their own minds." If there is any truth in this analysis the majority in a radical democracy often rules only in name. No movement, indeed, illustrates more clearly than the supposedly democratic movement the way in which the will of highly organized and resolute minorities may prevail over the will of the inert and unorganized mass. Even though the mass does not consent to "trudge" after the minority, it is at an increasing disadvantage in its attempts to resist it. Physical science is on the side of the tyrannical minority. The ordinary citizen cannot have a machine

gun by his fireside or a "tank" in his back yard. The most recent type of revolutionary idealist, though his chief concern is still to bestow benefit on the people, does not, to do him justice, hope to achieve this benefit through the majority, but rather through the direct action of organized minorities. He feels that he is justified in cramming his nostrum down the throat of the people, if necessary by force.

The radical of this type is coming round to the doctrine of the saving remnant and recognizing in his own way that everything finally hinges on the quality of the leadership. His views, however, as to this quality differ strangely from the traditional views. One must admit that, whatever theories of leadership may have been held traditionally, actual leadership has never been any too good. One scarcely suspects, as John Selden remarked, "What a little foolery governs the world." Moreover, the folly which has prevailed at the top of society, and that from the time of the Trojan War, has ever been faithfully reflected in the rank and file (*Quidquid delirant reges*—). One who surveys the past is at times tempted to acquiesce in the gloomy judgment of Dryden: "No government has ever been or ever can be wherein time-servers and blockheads will not be uppermost. The persons are only changed, but the same juggling in state, the same hypocrisy in religion, the same self-interest and mismanagement will remain forever. Blood and money will be lavished in all ages only for the preferment of new faces with old consciences." One should note, however, a difference between the bad leadership of the past and that of the modern revolutionary era. The leaders of the past have most frequently been bad in violation of the principles they professed, whereas it is when a Robespierre or a Lenin sets out to apply his principles that the man who is interested in the survival of civilization has reason to tremble.

Dryden's passage seems to suggest that what is really needed is not new faces with old consciences, but a transformation of conscience itself. It is precisely such a transformation that a revolutionary idealist like Robespierre hopes to effect. For the corrupt conscience of the old type of aristocratic leader he would substitute a social conscience. The popular will that is inspired by this conscience is so immaculate, as we have seen, that it may safely be put in the place not merely of the royal but of the divine will. I have already tried to show that a leader who sets out to be

only the organ of a "general will" or "divine average," that is conceived at times as essentially reasonable and at other times as essentially fraternal, will actually become imperialistic. It may be well at this point to submit this democratic idealism to still further analysis with special reference to its probable effect on our own international relations. The tendency for some time past has been to treat international law, not theoretically as an embodiment of reason, but positively as an embodiment of will. In that case, if international law is to reflect any improvement in the relations between states, it must be shown that the substitution of the popular will for the divine will has actually tended to promote ethical union among men even across national frontiers. If we analyse realistically the popular will, we find that it means the will of a multitude of men who are more and more emancipated from traditional standards and more and more given over to what I have termed the irresponsible quest of thrills. . . .

[279] The reason that the Rousseauist often alleges for his attacks on the analytical intellect, the necessary instrument of Socratic dialectic, is that it destroys unity. His disparagement of analysis may be due, however, even less to his love of unity than to his dislike of effort. It may be that, like Rousseau himself, he is seeking to give to indolence the dignity of a philosophical occupation. If it is a strenuous thing to concentrate imaginatively on the facts of the natural order, the concentration in the facts of the human order that enables one to use one's terms correctly is even more strenuous. What a monstrous inequality, said Lincoln, to pay an honest laborer seventy cents a day for digging coal and a President seventy dollars a day for digging abstractions! The argument that Lincoln thus puts forth ironically, a follower of Karl Marx would be capable of employing seriously. But if the President does honest work, if he digs his abstractions properly, instead of substituting some art of going through the motions, he must display the utmost contention of spirit. There have been moments in recent years when a President of this kind would have been worth to the country many times seventy dollars a day. Did the idealistic abstractions, one must make bold to ask, that Mr. Woodrow Wilson poured forth so profusely when President, satisfy the Socratic and Confucian test—did they correspond with things? The late Mr. Walter H. Page concluded after unusual opportunities of observation, that Mr. Wilson was "*not* a leader, but rather

a stubborn phrase-maker." Fine words, according to the homely adage, butter no parsnips. They may, however, it would seem, put a man in the White House. Mr. Wilson, it should be remembered, was not only an ex-college president himself, but in his main polities he had the eager support of practically the whole corporation of college presidents. If Mr. Page's estimate of Mr. Wilson should prove to be correct, it would follow that our American remnant—and college presidents should surely belong to the remnant—is not sufficiently critical. The question is one of some gravity, if it be true, as I said at the outset, that democracy will in the long run have to be judged, like any other form of government, by the quality of its leadership, and if it be true, furthermore, that under existing conditions we must get our standards and our leadership along Socratic rather than traditional lines. "What the Americans most urgently require," said Matthew Arnold, "is a steady exhibition of cool and sane criticism." That is precisely what they require and what they have never had.

If we had a Socratic remnant one of its chief concerns would be to give a civilized content to the catch-words that finally govern the popular imagination. The Sophist and the demagogue flourish in an atmosphere of vague and inaccurate definition. With the aid of the Socratic critic, on the other hand, Demos might have some chance of distinguishing between its friends and its flatterers—something that Demos has hitherto been singularly unable to do. Let one consider those who have posed with some success as the people's friends from Cleon of Athens to Marat; and from Marat to William Randolph Hearst. It would sometimes seem, indeed, that the people might do very well were it not for its "friends." The demagogue has been justified only too often in his assumption that men may be led, not by their noses, but by their ears as tenderly as asses are. The records of the past reveal that the multitude has frequently been persuaded by a mirage of words that the ship of state was steering a straight course for Eldorado, when it was in reality drifting on a lee-shore; and the multitude has not been apprized of the peril until it was within the very sound of the breakers.

It is only too evident that we are not coping adequately with this special problem of democracy; that we are, on the contrary, in danger of combining the strength of giants with the critical intelligence of children. Millions of Americans were ready not so

very long ago to hail William Jennings Bryan as a "peerless leader." Other millions are ready apparently to bestow a similar salute on Henry Ford—in spite of the almost incredible exhibition he made of himself with his "Peace Ship." If our Socratic critics were sufficiently numerous, the followers of such leaders would finally become conscious of something in the air that was keen, crisp, and dangerous; they might finally be forced to ask themselves whether the ideals with which they were being beguiled really mean anything, or at all events anything more than the masking in fine phrases of the desire to get one's hand into the other citizen's pocket. The devil, as is well known, is a comparatively harmless person unless he is allowed to disguise himself as an angel of light. An unvarnished materialism is in short less to be feared than sham spirituality. Sham spirituality is especially promoted by the blurring of distinctions, which is itself promoted by a tampering with general terms. A dialectical scrutiny of such terms is therefore indispensable if one is to determine whether what a man takes to be his idealism is merely some windy inflation of the spirit, or whether it has support in the facts of human experience.

[294] . . . . For true liberty is not liberty to do as one likes, but liberty to adjust oneself, in some sense of that word, to law. "The Abbé Coigniard," says Anatole France, "would not have signed a line of the declaration of the rights of man because of the excessive and unjust discrimination it establishes between man and the gorilla." The true objection to the declaration of the rights of man is the exact opposite of the one stated by M. France: it does not establish a sufficiently wide gap between man and the gorilla. This gap can be maintained only if one insists that genuine liberty is the reward of ethical efforts; it tends to disappear if one presents liberty as a free gift of "nature."

It may, indeed, be urged that the theory of natural rights, though false, may yet be justified as a "useful fiction," that it has often shown itself an effective weapon of attack on the iniquities of the existing social order. One may doubt, however, the utility of the fiction, for what it tends to oppose to the existing order is not a better order but anarchy. No doubt the established order of any particular time and place that the partisan of "rights" would dismiss as conventional and artificial is, compared with true and perfect order, only a shadow; but such as it is, it cannot be lightly

abandoned in favor of some "ideal" that, when critically examined, may turn out to be only a mirage on the brink of a precipice. The "unwritten laws of heaven" of which the great humanist Sophocles speaks are felt in their relation to the written law, not as a right, but as a stricter obligation.

The tendency of the doctrine of natural rights to weaken the sense of obligation, and so to undermine genuine liberty, may be studied in connection with its influence on the common law which has prevailed among the English-speaking peoples. The spirit of this law at its best is that of a wholesome moral realism. Under the influence of the school of rights the equity that is often in conflict with strict law was more or less identified with a supposed law of "nature." This identification encouraged an unsound individualism. The proper remedy for an unsound individualism is a sound individualism, an individualism that starts, not from rights, but from duties. The actual reply to the unrestraint of the individual has been another doctrine of rights, the rights of society, which are sometimes conceived almost as metaphysically as the older doctrine of the rights of man. The representatives of this school of legal thinking tend to identify equity with the principle of social utility. Judges have already appeared who have so solicited the strict letter of the law in favor of what they deemed to be socially expedient as to fall into a veritable confusion of the legislative and judicial functions. Unfortunately those who represent society at any particular moment and who are supposed to overflow with a will to service will be found by the realistic observer (in so far at least as they are mere humanitarian crusaders in whom there is no survival of the traditional controls) to be developing, under cover of their altruism, a will to power. On the pretext of social utility they are ready to deprive the individual of every last scrap and vestige of his freedom and finally to subject him to despotic outer control. No one, as Americans of the present day are only too well aware, is more reckless in his attacks on personal liberty than the apostle of "service." He is prone in his furtherance of his schemes of "uplift" not only to ascribe unlimited sovereignty to society as against the individual, but to look on himself as endowed with a major portion of it, to develop a temper, in short, that is plainly tyrannical. . . .

[310] It follows from what I have said that ethical union whether in the single man or among different men or on the national or in-

ternational scale, is attainable so far as it is attainable at all, not by expansive emotion nor by any form of machinery or organization (in the current sense of the word), but only by the pathway of the inner life. Some persons will remain spiritually anarchical in spite of educational opportunity, others will acquire at least the rudiments of ethical discipline, whereas still others, a small minority, if we are to judge by past experience, will show themselves capable of the more difficult stages of self-conquest that will fit them for leadership. Our traditional education with all its defects did something to produce leaders of this ethical type, whereas the utilitarian-sentimental education which has been tending to supplant it is, as I have been trying to show, lacking in the essentials of the inner life and so is not likely to produce either religious or humanistic leaders. Most Americans of the present day will, indeed, feel that they have refuted sufficiently all that I have said, if they simply utter the word "service." One may suspect, however, that the popularity of the gospel of service is due to the fact that it is flattering to unregenerate human nature. It is pleasant to think that one may dispense with awe and reverence and the inner obeisance of the spirit to standards, provided one be eager to do something for humanity. "The highest worship of God," as Benjamin Franklin assures us blandly, "is service to man." If it can be shown experimentally—and a certain amount of evidence on this point has accumulated since the time of Franklin—that service in this sense is not enough to chain up the naked lusts of the human heart, one must conclude that the supreme exemplar of American shrewdness and practicality did not, in the utterance I have just cited, show himself sufficiently shrewd and practical. The gospel of service is at all events going to receive a thorough trial, if nowhere else, then in America. We are rapidly becoming a nation of humanitarian crusaders. The present reign of legalism is the most palpable outcome of this crusading. It is growing only too evident, however, that the drift towards license is being accelerated rather than arrested by the multiplication of laws. If we do not develop a sounder type of vision than that of our "uplifters" and "forward-lookers," the history of free institutions in this country is likely to be short, and, on the whole, discreditable. Surely the first step is to perceive that the alternative to a constitutional liberty is not a legalistic millennium, but a triumph of anarchy followed by a triumph of force. The time may

come, with the growth of a false liberalism, when a predominant element in our population, having grown more and more impatient of the ballot box and representative government, of constitutional limitations and judicial control, will display a growing eagerness for "direct action." This is the propitious moment for the imperialistic leader. Though the triumph of any type of imperialistic leader is a disaster, especially in a country like our own that has known the blessings of liberty under the law, nevertheless there is a choice even here. Circumstances may arise when we may esteem ourselves fortunate if we get the American equivalent of a Mussolini; he may be needed to save us from the American equivalent of Lenin. Such an emergency is not to be anticipated, however, unless we drift even further than we have thus far from the principles that underlie our unionist tradition. The maintenance of this tradition is indissolubly bound up with the maintenance of standards. The democratic contention that everybody should have a chance is excellent provided it means that everybody is to have a chance to measure up to high standards. If the democratic extension of opportunity is, on the other hand, made a pretext for lowering standards, democracy is, in so far, incompatible with civilization. One might be more confident of the outcome of the struggle between a true and a false liberalism that has been under way since the founding of the Republic, if the problem of standards was being dealt with more adequately in our education, above all in our higher education. The tendency here, however, is, as I have noted, to discard standards in favor of "ideals"; and ideals, as currently understood, recognize very imperfectly, if at all, that man needs to be disciplined to a law of his own, distinct from the law of physical nature. One might view this idealistic development with more equanimity if one were convinced with Professor John Dewey that the growing child exudes spontaneously a will to service. If we look, however, on this form of spontaneity as a romantic myth, we shall be forced to conclude that we have been permitting Professor Dewey and his kind to have an influence on our education that amounts in the aggregate to a national calamity; that with the progress of ideals of this kind our higher education in particular is, from the point of view of a genuinely liberal training, in danger of becoming a vast whir of machinery in the void; finally, that, in the interest of our experiment in free institutions, we need educational leaders who will have

less to say of service and more to say of culture and civilization, and who will so use these words as to show that they have some inkling of their true meaning. . . .

ALFRED E. SMITH

CHURCH AND STATE IN AMERICA [1]

1927

Governor Smith's record in New York and his speeches during the presidential campaign of 1928 would seem to indicate that he is in general agreement with the principles underlying the progressive movement. He has never, however, attempted to set forth a theoretical exposition of his political faith, except as regards the problem of the relation of the ecclesiastical and secular powers. In the April, 1927, number of the *Atlantic Monthly*, Mr. Charles C. Marshall addressed an open letter to Governor Smith in which he raised the question whether membership in the Roman Catholic Church would be compatible with complete loyalty to the American government and complete freedom to perform the duties of the presidency unrestricted by ecclesiastical interference.

Taking your letter as a whole and reducing it to commonplace English, you imply that there is conflict between religious loyalty to the Catholic faith and patriotic loyalty to the United States. Everything that has actually happened to me during my long public career leads me to know that no such thing as that is true. I have taken an oath of office in this State nineteen times. Each time I swore to defend and maintain the Constitution of the United States. All of this represents a period of public service in elective office almost continuous since 1903. I have never known of any conflict between my official duties and my religious belief. No such conflict could exist. Certainly the people of this State recognize no such conflict. They have testified to my devotion to public duty by electing me to the highest office within their gift four times. You yourself do me the honor, in addressing me, to refer to 'your fidelity to the morality you have advocated in public and private life and to the religion you have revered; your great

[1] Reply to the Letter of Mr. Charles C. Marshall, *Atlantic Monthly*, May, 1927, pp. 722–28.

record of public trusts successfully and honestly discharged.' During the years I have discharged these trusts I have been a communicant of the Roman Catholic Church. If there were conflict, I, of all men, could not have escaped it, because I have not been a silent man, but a battler for social and political reform. These battles would in their very nature disclose this conflict if there were any. . . .

But, wishing to meet you on your own ground, I address myself to your definite questions, against which I have thus far made only general statements. I must first call attention to the fact that you often divorce sentences from their context in such a way as to give them something other than their real meaning. I will specify. You refer to the Apostolic Letter of Pope Leo XIII as 'declaring to the world that the orders of the Church of England were void, her priests not priests,' and so forth. You say that this was the 'strange fruit' of the toleration of England to the Catholics. You imply that the Pope gratuitously issued an affront to the Anglican Church. In fact, this Apostolic Letter was an answer to a request made at the instance of priests of the Anglican Church for recognition of the Roman Catholic Church of the validity of their priestly orders. The request was based on the ground that they had been ordained in succession from the Roman Catholic priests who became the first priests of the Anglican Church. The Apostolic Letter was a mere adverse answer to this request, ruling that Anglican priests were not Roman Catholic priests, and was in no sense the gratuitous insult which you suggest it to be. It was not directed against England or citizens of that Empire.

Again, you quote from the *Catholic Encyclopedia* that my Church 'regards dogmatic intolerance, not alone as her incontestable right, but as her sacred duty.' And you say that these words show that Catholics are taught to be politically, socially, and intellectually intolerant of all other people. If you had read the whole of that article in the *Catholic Encyclopedia*, you would know that the real meaning of these words is that for Catholics alone the Church recognizes no deviation from complete acceptance of its dogma. These words are used in a chapter dealing with that subject only. The very same article in another chapter dealing with toleration toward non-Catholics contains these words: 'The intolerant man is avoided as much as possible by every high-minded person. . . . The man who is tolerant in every emergency is alone lovable.'

The phrase 'dogmatic intolerance' does not mean that Catholics are to be dogmatically intolerant of other people, but merely that inside the Catholic Church they are to be intolerant of any variance from the dogma of the Church.

Similar criticism can be made of many of your quotations. But, beyond this, by what right do you ask me to assume responsibility for every statement that may be made in any encyclical letter? As you will find in the *Catholic Encyclopedia* (Vol. V, p. 414) these encyclicals are not articles of our faith. The Syllabus of Pope Pius IX, which you quote on the possible conflict between Church and State is declared by Cardinal Newman to have 'no dogmatic force.' You seem to think that Catholics must be all alike in mind and in heart, as though they had been poured into and taken out of the same mould. You have no more right to ask me to defend as part of my faith every statement coming from a prelate than I should have to ask you to accept as an article of your religious faith every statement of an Episcopal bishop, or of your political faith every statement of a President of the United States. So little are these matters of the essence of my faith that I, a devout Catholic since childhood, never heard of them until I read your letter. Nor can you quote from the canons of our faith a syllable that would make us less good citizens than non-Catholics. . . .

Your first proposition is that Catholics believe that other religions should, in the United States, be tolerated only as a matter of favor and that there should be an established church. You may find some dream of an ideal of a Catholic State, having no relation whatever to actuality, somewhere described. But, voicing the best Catholic thought on this subject, Dr. John A. Ryan, Professor of Moral Theology at the Catholic University of America, writes in *The State and the Church* of the encyclical of Pope Leo XIII, quoted by you:—

'In practice, however, the foregoing propositions have full application only to the completely Catholic State. . . . The propositions of Pope Pius IX condemning the toleration of non-Catholic sects do not now, says Father Pohle, "apply even to Spain or the South American republics, to say nothing of countries possessing a greatly mixed population." He lays down the following general rule: "When several religions have firmly established themselves and taken root in the same territory, nothing else remains for the

State than to exercise tolerance towards them all, or, as conditions exist to-day, to make complete religious liberty for individual and religious bodies a principle of government.'' '

That is good Americanism and good Catholicism. And Father Pohle, one of the great writers of the Catholic Church, says further:—

'If religious freedom has been accepted and sworn to as a fundamental law in a constitution, the obligation to show this tolerance is binding in conscience.'

The American prelates of our Church stoutly defend our constitutional declaration of equality of all religions before the law. . . .

I come now to the speculation with which theorists have played for generations as to the respective functions of Church and State. You claim that the Roman Catholic Church holds that, if conflict arises, the Church must prevail over the State. You write as though there were some Catholic authority or tribunal to decide with respect to such conflict. Of course there is no such thing. As Dr. Ryan writes: 'The Catholic doctrine concedes, nay, maintains, that the State is coördinate with the Church and equally independent and supreme in its own distinct sphere.'

What is the Protestant position? The Articles of Religion of your Protestant Episcopal Church (XXXVII) declare: 'The Power of the Civil Magistrate extendeth to all men, as well Clergy as Laity, in all things temporal; but hath no authority in things purely spiritual.'

Your Church, just as mine, is voicing the injunction of our common Saviour to render unto Caesar the things that are Caesar's, and unto God the things that are God's.

What is this conflict about which you talk? It may exist in some lands which do not guarantee religious freedom. But in the wildest dreams of your imagination you cannot conjure up a possible conflict between religious principle and political duty in the United States except on the unthinkable hypothesis that some law were to be passed which violated the common morality of all God-fearing men. And if you can conjure up such a conflict, how would a Protestant resolve it? Obviously by the dictates of his conscience. That is exactly what a Catholic would do. There is no ecclesiastical tribunal which would have the slightest claim upon the obedience of Catholic communicants in the resolution of

such a conflict. As Cardinal Gibbons said of the supposition that 'the Pope were to issue commands in purely civil matters':—

'He would be offending not only against civil society, but against God, and violating an authority as truly from God as his own. Any Catholic who clearly recognized this would not be bound to obey the Pope; or rather his conscience would bind him absolutely to disobey, because with Catholics conscience is the supreme law which under no circumstances can we ever lawfully disobey.'

I next come to education. You admit that the Supreme Court guaranteed to Catholics the right to maintain their parochial schools; and you ask me whether they would have so ruled if it had been shown that children in parochial schools were taught that the State should show discrimination between religions, that Protestants should be recognized only as a matter of favor, that they should be intolerant to non-Catholics, and that the laws of the State could be flouted on the ground of the imaginary conflict. My summary answer is: I and all my children went to a parochial school. I never heard of any such stuff being taught or of anybody who claimed that it was. That any group of Catholics would teach it is unthinkable.

You next challenge the action of the Rota in annulling the Marlborough marriage. You suggest that the Rota by annulling the marriage (where the civil courts recognized it, but granted only a divorce) is interfering with the civil jurisdiction. That might be so if anybody claimed that the decree of the Rota had any effect under the laws of America, or any other nation of the world. But you must know that it has no such effect and that nobody claims it has. The decree merely defined the status of the parties as communicants of the Church. Your Church refuses to recognize the ecclesiastical validity of divorces granted by the civil tribunals. Your Church has its tribunals to administer its laws for the government of its members as communicants of your Church. But their decrees have no bearing upon the status of your members as citizens of the United States. There is no difference in that respect between your tribunals and the Rota.

Finally you come to Mexico. By inference from the brief of a distinguished lawyer you intimate that it is the purpose of organized Catholics to seek intervention by the United States. Now I never read Mr. Guthrie's brief. I do not have to read it to

reply to you, because the Pastoral Letter of the Catholic Episcopate of the United States in unmistakable words disclaimed any such intention. I do not see how, with complete candor, you could write to me about Mexico without quoting the following from that Pastoral Letter:—

'What, therefore, we have written is no call on the faithful here or elsewhere to purely human action. It is no interposition of our influence either as Bishops or as citizens to reach those who possess political power anywhere on earth, and least of all in our own country, to the end that they should intervene with armed force in the internal affairs of Mexico for the protection of the Church. Our duty is done when, by telling the story, we sound a warning to Christian civilization that its foundations are again being attacked and undermined. For the rest, God will bring His will to pass in His own good time and in His own good way.'

My personal attitude, wholly consistent with that of my Church, is that I believe in peace on earth, good will to men, and that no country has a right to interfere in the internal affairs of any other country. I recognize the right of no church to ask armed intervention by this country in the affairs of another, merely for the defense of the rights of a church. But I do recognize the propriety of Church action to request the good offices of this country to help the oppressed of any land, as those good offices have been so often used for the protection of Protestant missionaries in the Orient and the persecuted Jews of eastern Europe.

I summarize my creed as an American Catholic. I believe in the worship of God according to the faith and practice of the Roman Catholic Church. I recognize no power in the institutions of my Church to interfere with the operations of the Constitution of the United States or the enforcement of the law of the land. I believe in absolute freedom of conscience for all men and in equality of all churches, all sects, and all beliefs before the law as a matter of right and not as a matter of favor. I believe in the absolute separation of Church and State and in the strict enforcement of the provisions of the Constitution that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. I believe that no tribunal of any church has any power to make any decree of any force in the law of the land, other than to establish the status of its own communicants within its own church. I believe in the support of the public school as one

of the corner stones of American liberty. I believe in the right of every parent to choose whether his child shall be educated in the public school or in a religious school supported by those of his own faith. I believe in the principle of non-interference by this country in the internal affairs of other nations and that we should stand steadfastly against any such interference by whomsoever it may be urged. And I believe in the common brotherhood of man under the common fatherhood of God. . . .

HERBERT HOOVER

GOVERNMENT IN BUSINESS [1]

1928

In 1923 Mr. Hoover published a little book entitled *American Individualism.* It does not discuss concrete proposals but defends the general propositions that "Salvation will not come to us out of the wreck of individualism," (p. 66) and that "Progress will march if we hold an abiding faith in the intelligence, the initiative, the character, the courage, and the divine touch in the individual" (p. 71). During the presidential campaign of 1928 Mr. Hoover defended such methods of state aid and regulation as the protective tariff, strict enforcement of the prohibition laws, and protection to approved investors in foreign countries, but he continued to oppose proposals for government ownership and operation of water power resources, public utilities, and the like. Governor Smith having declared himself in favor of public ownership of water power resources, government aid to the farmers according to the "principle" of the McNary-Haugen plan, and some measure of state control of the liquor traffic under national laws permitting the states to fix the maximum legal percentage of alcohol in intoxicating beverages, Mr. Hoover, in the speech from which this extract is taken, challenged these proposals on the ground that they necessitated a departure from traditional American principles. It is perhaps significant that in Governor Smith's answer, delivered in Boston on October 24, he did not state that he is not a socialist, but rather declared that the same measures are, or have been favored by Theodore Roosevelt, Charles E. Hughes, and many other members of the Republican party.

There has been revived in this campaign, however, a series of proposals which, if adopted, would be a long step toward the abandonment of our American system and a surrender to the

[1] From the speech delivered in New York, October 22, 1928.

destructive operation of governmental conduct of commercial business. Because the country is faced with difficulty and doubt over certain national problems—that is, prohibition, farm relief and electrical power—our opponents propose that we must thrust government a long way into the businesses which give rise to these problems. In effect, they abandon the tenets of their own party and turn to state socialism as a solution for the difficulties presented by all three. It is proposed that we shall change from prohibition to the state purchase and sale of liquor. If their agricultural relief program means anything, it means that the government shall directly or indirectly buy and sell and fix prices of agricultural products. And we are to go into the hydro-electric power business. In other words, we are confronted with a huge program of government in business.

There is, therefore, submitted to the American people a question of fundamental principle. That is:

Shall we depart from the principles of our American political and economic system, upon which we have advanced beyond all the rest of the world, in order to adopt methods based on principles destructive of its very foundation? And I wish to emphasize the seriousness of these proposals. I wish to make my position clear; for this goes to the very roots of American life and progress.

I should like to state to you the effect that this projection of government in business would have upon our system of self-government and our economic system. That effect would reach to the daily life of every man and woman. It would impair the very basis of liberty and freedom, not only for those left outside the fold of expanded bureaucracy but for those embraced within it.

Let us first see the effect upon self-government. When the federal government undertakes to go into commercial business it must at once set up the organization and administration of that business, and it immediately finds itself in a labyrinth, every alley of which leads to the destruction of self-government.

Commercial business requires a concentration of responsibility. Self-government requires decentralization and many checks and balances to safeguard liberty. Our government to succeed in business would need become in effect a despotism. There at once begins the destruction of self-government.

The first problem of the government about to adventure in com-

mercial business is to determine a method of administration. It must secure leadership and direction. Shall this leadership be chosen by political agencies or shall we make it elective? The hard practical fact is that leadership in business must come through the sheer rise in ability and character. That rise can only take place in the free atmosphere of competition. Competition is closed by bureaucracy. Political agencies are feeble channels through which to select able leaders to conduct commercial business.

Government, in order to avoid the possible imcompetence, corruption and tyranny of too great authority in individuals entrusted with commercial business, inevitably turns to boards and commissions. To make sure that there are checks and balances, each member of such boards and commissions must have equal authority. Each has his separate responsibility to the public, and at once we have the conflict of ideas and the lack of decision which would ruin any commercial business. It has contributed greatly to the demoralization of our shipping business. Moreover, these commissions must be representative of different sections and different political parties, so that at once we have an entire blight upon co-ordinated action within their ranks which destroys any possibility of effective administration.

Moreover, our legislative bodies cannot in fact delegate their full authority to commissions or to individuals for the conduct of matters vital to the American people; for if we would preserve government by the people we must preserve the authority of our legislators in the activities of our government.

Thus every time the federal government goes into a commercial business, 531 senators and congressmen become the actual board of directors of that business. Every time a state government goes into business, 100 to 200 state senators and legislators become the actual directors of that business. Even if they were supermen and if there were no politics in the United States, no body of such numbers could competently direct commercial activities; for that requires initiative, instant decision, and action. It took Congress six years of constant discussion to even decide what the method of administration of Muscle Shoals should be.

When the federal government undertakes to go into business, the state governments are at once deprived of control and taxation of that business; when a state government undertakes to go

into business, it at once deprives the municipalities of taxation and control of that business. Municipalities, being local and close to the people, can, at times, succeed in business, where federal and state governments must fail.

We have trouble enough with log rolling in legislative bodies today. It originates naturally from desires of citizens to advance their particular section or to secure some necessary service. It would be multiplied a thousand-fold were the federal and state governments in these businesses.

The effect upon our economic progress would be even worse. Business progressiveness is dependent on competition. New methods and new ideas are the outgrowth of the spirit of adventure, of individual initiative and of individual enterprise. Without adventure there is no progress. No government administration can rightly take chances with taxpayers' money.

There is no better example of the practical incompetence of government to conduct business than the history of our railways. During the war the government found it necessary to operate the railways. That operation continued until after the war. In the year before being freed from government operation they were not able to meet the demands for transportation. Eight years later we find them under private enterprise transporting 15 per cent. more goods and meeting every demand for service. Rates have been reduced by 15 per cent. and net earnings increased from less than 1 per cent. on their valuation to about 5 per cent. Wages of employees have improved by 13 per cent. The wages of railway employees are today 121 per cent. above pre-war, while the wages of government employees are today only 65 per cent. above pre-war. That should be a sufficient commentary upon the efficiency of government operation. . . .

. . . . The great body of government employees which would be created by the proposals of our opponents would either comprise a political machine at the disposal of the party in power, or alternatively, to prevent this, the government by stringent civil-service rules must debar its employees from their full political rights as free men.

It must limit them in the liberty to bargain for their own wages, for no government employee can strike against his government and thus against the whole people. It makes a legislative body with all its political currents their final employer and master. Their bar-

gaining does not rest upon economic need or economic strength, but on political potence.

But what of those who are outside the bureaucracy? What is the effect upon their lives?

The area of enterprise and opportunity for them to strive and rise is at once limited.

The government in commercial business does not tolerate amongst its customers the freedom of competitive reprisals to which private business is subject. Bureaucracy does not tolerate the spirit of independence; it spreads the spirit of submission into our daily life and penetrates the temper of our people, not with the habit of powerful resistance to wrong but with the habit of timid acceptance of irresistible might.

Bureaucracy is ever desirous of spreading its influence and its power. You cannot extend the mastery of the government over the daily working life of a people without at the same time making it the master of the people's souls and thoughts. Every expansion of government in business means that government in order to protect itself from the political consequences of its errors and wrongs is driven irresistibly without peace to greater and greater control of the nation's press and platform. Free speech does not live many hours after free industry and free commerce die.

It is a false liberalism that interprets itself into the government operation of commercial business. Every step of bureaucratizing of the business of our country poisons the very roots of liberalism—that is, political equality, free speech, free assembly, free press, and equality of opportunity. It is the road not to more liberty, but to less liberty. Liberalism should be found not striving to spread bureaucracy but striving to set bounds to it. True liberalism seeks all legitimate freedom first in the confident belief that without such freedom the pursuit of all other blessings and benefits is vain. That belief is the foundation of all American progress, political as well as economic.

Liberalism is a force truly of the spirit, a force proceeding from the deep realization that economic freedom cannot be sacrificed if political freedom is to be preserved. Even if governmental conduct of business could give us more efficiency instead of less efficiency, the fundamental objection to it would remain unaltered and unabated. It would destroy political equality. It would increase rather than decrease abuse and corruption. It would stifle

initiative and invention. It would undermine the development of leadership. It would cramp and cripple the mental and spiritual energies of our people.

It would extinguish equality and opportunity. It would dry up the spirit of liberty and progress. For these reasons primarily it must be resisted. For 150 years liberalism has found its true spirit in the American system, not in the European systems.

I do not wish to be misunderstood in this statement. I am defining a general policy. It does not mean that our government is to part with one iota of its national resources without complete protection to the public interest. I have already stated that where the government is engaged in public works for purposes of flood control, of navigation, of irrigation, of scientific research, of national defense or in pioneering a new art, it will at times necessarily produce power or commodities as a by-product. But they must be a by-product of the major purpose, not the major purpose itself.

Nor do I wish to be misinterpreted as believing that the United States is free-for-all and devil-take-the-hindmost. The very essence of equality of opportunity and of American individualism is that there shall be no domination by any group or combination in this republic, whether it be business or political. On the contrary, it demands economic justice as well as political and social justice. It is no system of laissez faire.

I feel deeply on this subject because during the war I had some practical experience with governmental operation and control. I have witnessed not only at home but abroad the many failures of government in business. I have seen its tyrannies, its injustices, its destruction of self-government, its undermining of the very instincts which carry our people forward to progress. I have witnessed the lack of advance, the lowered standards of living, the depressed spirits of people working under such a system. My objection is based not upon theory or upon a failure to recognize wrong or abuse, but I know the adoption of such methods would strike at the very roots of American life and would destroy the very basis of American progress.

Our people have the right to know whether we can continue to solve our great problems without abandonment of our American system. I know we can. We have demonstrated that our system is responsive enough to meet any new and intricate development

in our economic and business life. We have demonstrated that we can meet any economic problem and still maintain our democracy as master in its own house, and that we can at the same time preserve equality of opportunity and individual freedom.

In the last 50 years we have discovered that mass production will produce articles for us at half the cost they required previously. We have seen the resultant growth of large units of production and distribution. This is big business. Many businesses must be bigger, for our tools are bigger, our country is bigger. We now build a single dynamo of 100,000 horsepower. Even 15 years ago that would have been a big business all by itself. Yet today advance in production requires that we set 10 of these units together in a row.

The American people from bitter experience have a rightful fear that great business units might be used to dominate our industrial life and by illegal and unethical practices destroy equality of opportunity.

Years ago the Republican administration established the principle that such evils could be corrected by regulation. It developed methods by which abuses could be prevented while the full value of industrial progress could be retained for the public. It insisted upon the principle that when great public utilities were clothed with the security of partial monopoly, whether it be railways, power plants, telephones or what not, then there must be the fullest and most complete control of rates, services, and finances by government or local agencies. It declared that these businesses must be conducted with glass pockets.

As to our great manufacturing and distributing industries, the Republican party insisted upon the enactment of laws, that not only would maintain competition, but would destroy conspiracies to destroy the smaller units or dominate and limit the equality of opportunity amongst our poeple.

One of the great problems of government is to determine to what extent the government shall regulate and control commerce and industry and how much it shall leave it alone. No system is perfect. We have had many abuses in the private conduct of business. That every good citizen resents. It is just as important that business keep out of government as that government keep out of business.

Nor am I setting up the contention that our institutions are

perfect. No human ideal is ever perfectly attained, since humanity itself is not perfect.

The wisdom of our forefathers in their conception that progress can only be attained as the sum of the accomplishment of free individuals has been re-enforced by all of the great leaders of the country since that day. Jackson, Lincoln, Cleveland, McKinley, Roosevelt, Wilson and Coolidge have stood unalterably for these principles.

And what have been the results of our American system? Our country has become the land of opportunity to those born without inheritance, not merely because of the wealth of its resources and industry but because of this freedom of initiative and enterprise. Russia has natural resources equal to ours. Her people are equally industrious but she has not had the blessings of 150 years of our form of government and of our social system.

By adherence to the principles of decentralized self-government, ordered liberty, equal opportunity and freedom to the individual our American experiment in human welfare has yielded a degree of well-being unparalleled in all the world. It has come nearer to the abolition of poverty, to the abolition of fear of want, than humanity has ever reached before. Progress of the past seven years is the proof of it. This alone furnishes the answer to our opponents who ask us to introduce destructive elements into the system by which this has been accomplished. . . .

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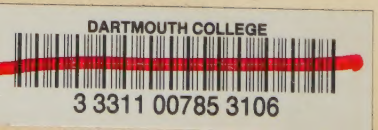

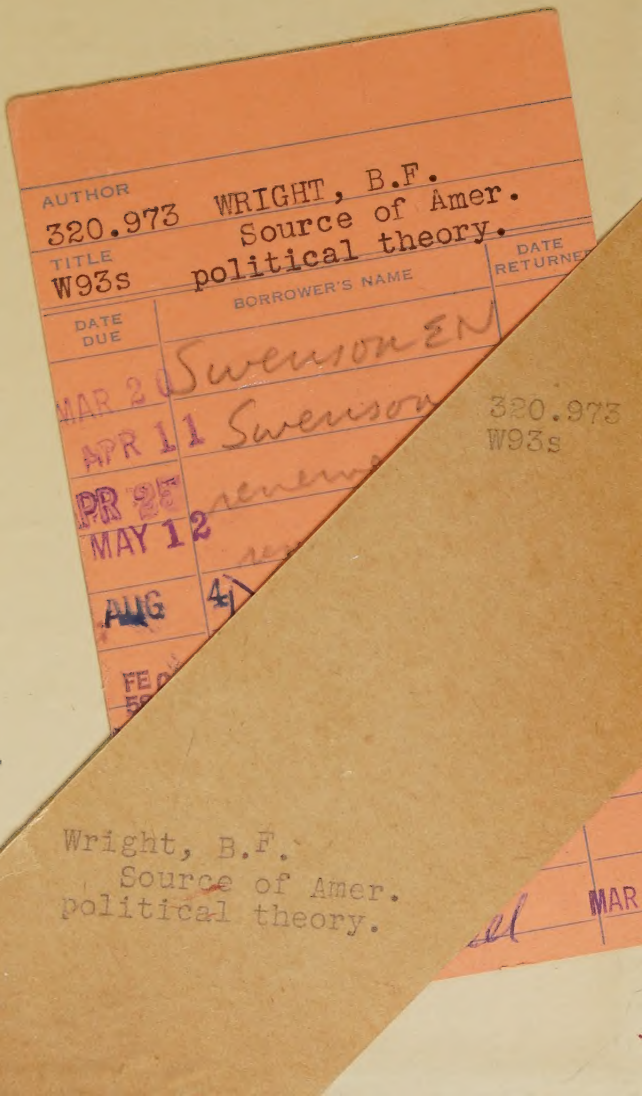
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